S. R. A.—Chem. Suppl. 27. Issued September 18, 1917.

United States Department of Agriculture,

BUREAU OF CHEMISTRY.

C. L. ALSBERG, Chief of Bureau.

SERVICE AND REGULATORY ANNOUNCEMENTS.

SUPPLEMENT.

N. J. 4801–4850.

[Approved by the Acting Secretary of Agriculture, Washington, D. C., August 9, 1917.]

NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT.

[Given pursuant to section 4 of the Food and Drugs Act.]

4801 (Supplement to Notices of Judgment 1455 and 4032). Alleged adulteration and misbranding of Coca Cola. U. S. v. 40 Barrels and 20 Kegs of Coca Cola. Decision of the Supreme Court of the United States reversing the judgment of the Circuit Court of Appeals for the Sixth Circuit, which sustained a judgment of the District Court for the Eastern District of Tennessee dismissing the libel for condemnation and forfeiture of the product referred to above, seized under section 10 of the Food and Drugs Act. Case remanded for further proceedings in conformity with the decision of the Supreme Court. (F. & D. No. 966. S. No. 352.)

On May 22, 1916, the above-cited case having come on for final disposition in the Supreme Court of the United States upon a writ of error to said court, brought on behalf of the United States, the judgment of the Circuit Court of Appeals of the Sixth Circuit, which sustained a judgment of the District Court of the Eastern District of Tennessee, dismissing the libel for condemnation and forfeiture of 40 barrels and 20 kegs of Coca Cola, seized under section 10 of the Food and Drugs Act, was reversed and the cause remanded for further proceedings, as will more fully appear from the following decision by the Supreme Court of the United States.

Mr. Justice Hughes delivered the opinion of the court.

This is a libel for condemnation under the Foods and Drugs Act (June 30, 1906, c. 3915, 34 Stat., 768) of a certain quantity of a food product known as "Coca Cola" transported, for sale, from Atlanta, Georgia, to Chattanooga, Tennessee. It was alleged that the product was adulterated and misbranded. The allegation of adulteration was, in substance, that the product contained an added poisonous or added deleterious ingredient, caffeine, which might render the product injurious to health. It was alleged to be misbranded in that the name "Coca Cola" was a representation of the presence of the substances coca and cola; that the product "contained no coca and little, if any cola" and thus was an "imitation" of these substances and was offered for sale under their "distinctive name." We omit other charges which the Government subsequently withdrew. The claimant answered, admitting that the product contained as

one of its ingredients "a small portion of caffeine," but denying that it was either an "added" ingredient, or a poisonous or a deleterious ingredient which might make the product injurious. It was also denied that there were substances known as coca and cola "under their own distinctive names," and it was averred that the product did contain "certain elements or substances derived from coca leaves and cola nuts." The answer also set forth, in substance, that "Coca Cola" was the "distinctive name" of the product under which it had been known and sold for more than twenty years as an article of food, with other averments negativing adulteration and misbranding under the provisions of the act.

Jury trial was demanded, and voluminous testimony was taken. The district judge directed a verdict for the claimant (191 Fed., 431), and judgment entered accordingly was affirmed on writ of error by the Circuit Court of Appeals (215 Fed., 535). And the Government now prosecutes this writ.

First. As to "*adulteration.*" The claimant, in its summary of the testimony, states that the article in question "is a syrup manufactured by the claimant * * * and sold and used as a base for soft drinks both at soda fountains and in bottles. The evidence shows that the article contains sugar, water, caffeine, glycerine, lime juice, and other flavoring matters. As used by the consumer, about one ounce of this syrup is taken in a glass mixed with about seven ounces of carbonated water, so that the consumer gets in an eight-ounce glass or bottle of the beverage about 1.21 grains of caffeine." It is said that in the year 1886 a pharmacist in Atlanta "compounded a syrup by a secret formula, which he called 'Coca-Cola Syrup and Extract'"; that the claimant acquired "the formula, name, label, and good will for the product" in 1892, and then registered "a trade-mark for the syrup consisting of the name Coco Cola" and has since manufactured and sold the syrup under that name. The proportion of caffeine was slightly diminished in the preparation of the article for bottling purposes. The claimant again registered the name "Coca Cola" as a trade-mark in 1905, averring that the mark had been "in actual use as a trade-mark of the applicant for more than ten years next preceding the passage of the act of February 20, 1905," and that it was believed such use had been exclusive. It is further stated that in manufacturing in accordance with the formula "certain extracts from the leaves of the coca shrub and the nut kernels of the cola tree were used for the purpose of obtaining a flavor" and that "the ingredient containing these extracts," with cocaine eliminated, is designated as "Merchandise No. 5." It appears that in the manufacturing process water and sugar are boiled to make a syrup; there are four meltings; in the second or third the caffeine is put in; after the meltings the syrup is conveyed to a cooling tank and then to a mixing tank where the other ingredients are introduced and the final combination is effected; and from the mixing tank the finished product is drawn off into barrels for shipment.

The questions with respect to the charge of "adulteration" are (1) whether the caffeine in the article was an added ingredient within the meaning of the act (sec. 7, subd. fifth); and if so, (2) whether it was a poisonous or deleterious ingredient which might render the article injurious to health. The decisive ruling in the courts below resulted from a negative answer to the first question. Both the district judge and the Circuit Court of Appeals assumed for the purpose of the decision that as to the second question there was a conflict of evidence which would require its submission to the jury. (191 Fed., 433; 215 Fed., 540.) But it was concluded, as the claimant contended, that the caffeine—even if it could be found by the jury to have the alleged effect—could not be deemed to be an "added ingredient," for the reason that the article was a compound, known and sold under its own distinctive name, of which the caffeine was a usual and normal constituent. The Government challenges this ruling and the construction of the statute upon which it depends; and the extreme importance of the question thus presented with respect to the applicaion of the act to articles of food sold under trade names is at once apparent. The Government insists that the fact that a formula has been made up and followed and a distinctive name adopted do not suffice to take an article from the reach of the statute; that the standard by which the combination in such a case is to be judged is not necessarily the combination itself; that a poisonous or deleterious ingredient with the stated injurious effect may still be an added ingredient in the statutory sense, although it is covered by the formula and made a constituent of the article sold.

The term "food" as used in the statute includes "all articles used for food, drink, confectionery, or condiment, * * * whether simple, mixed, or com-

pound." (Sec. 6.) An article of "food" is to be deemed to be "adulterated" if it contain "any added poisonous or other added deleterious ingredient which may render such article injurious to health," (Sec. 7, subd. fifth.[1]) With this section is to be read the proviso in section 8, to the effect that "an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded" in the case of "mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names," if the distinctive name of another article is not used or imitated and the name on the label or brand is accompanied with a statement of the place of production. And section 8 concludes with a further proviso that nothing in the act shall be construed "as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredient to disclose their trade formulas, except in so far as the provisions of this act may require to secure freedom from adulteration or misbranding."[2]

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[1] Section 7, with respect to "confectionery" and "food," is as follows:

"SEC. 7. That for the purposes of this act an article shall be deemed to be adulterated:

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"In the case of confectionery:

"If it contains terra alba, barytes, talc, chrome yellow, or other mineral substances or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt, or spiritous liquor or compound or narcotic drug.

"In the case of food:

"First. If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

"Second. If any substance has been substituted wholly or in part for the article.

"Third. If any valuable constituent of the article has been wholly or in part abstracted.

"Fourth. If it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed.

"Fifth. If it contain any added poisonous or other added deleterious ingredient which may render such article injurious to health: *Provided*, That when in the preparation of food products for shipment they are preserved by any external application applied in such manner that the preservative is necessarily removed mechanically, or by maceration in water, or otherwise, and directions for the removal of said preservative shall be printed on the covering or the package, the provisions of this act shall be construed as applying only when said products are ready for consumption.

"Sixth. If it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter."

[2] Section 8 provides:

"SEC. 8. That the term 'misbranded,' as used herein, shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein, which shall be false or misleading in any particular. * * *

"That for the purposes of this act an article shall also be deemed to be misbranded:

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"In the case of food:

"First. If it be an imitation of or offered for sale under the distinctive name of another article.

"Second. If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein.

"Third. If in package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package.

"Fourth. If the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular: *Provided*, That an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases:

"First. In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced.

"Second. In the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations, or blends, and the word 'compound,' 'imitation,' or 'blend,' as the case may be, is plainly stated on the package in which it is offered for sale: *Provided*, That the term blend as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only: *And provided further*, That nothing in this act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredient to disclose their trade formulas, except in so far as the provisions of this act may require to secure freedom from adulteration or misbranding."

In support of the ruling below, emphasis is placed upon the general purpose of the act which it is said was to prevent deception, rather than to protect the public health by prohibiting traffic in articles which might be determined to be deleterious. But a description of the purpose of the statute would be inadequate which failed to take account of the design to protect the public from lurking dangers caused by the introduction of harmful ingredients, or which assumed that this end was sought to be achieved by simply requiring certain disclosures. The statute is entitled "An act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors," etc. In the case of confectionery, we find that it is to be deemed to be adulterated if it contains certain specified substances "or other ingredient deleterious or detrimental to health." So, under section 7, subdivision sixth, there may be adulteration of food in case the article consists in whole or in part of "any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter." In *United States* v. *Lexington Mills Co.*, 232 U. S., 399, 409, it was said that "the statute upon its face shows that the primary purpose of Congress was to prevent injury to public health by the sale and transportation in interstate commerce of misbranded and adulterated foods. The legislation, as against misbranding, intended to make it possible that the consumer should know that an article purchased was what it purported to be; that it might be bought for what it really was and not upon misrepresentations as to character and quality. As against adulteration, the statute was intended to protect the public health from possible injury by adding to articles of food consumption poisonous and deleterious substances which might render such articles injurious to the health of consumers." See also *United States* v. *Antikamnia Co.*, 231 U. S., 654, 665; H. R. Report No. 2118, 59th Cong., 1st sess., 6–9. It is true that in executing these purposes Congress has limited its prohibitions (*Savage* v. *Jones*, 225 U. S., 501, 529, 532) and has specifically defined what shall constitute adulteration or misbranding; but in determining the scope of specific provisions the purpose to protect the public health, as an important aim of the statute, must not be ignored.

Reading the provisions here in question in the light of the context, we observe:

(*a*) That the term "adulteration" is used in a special sense. For example, the product of a diseased animal may not be adulterated in the ordinary or strict meaning of the word but by reason of its being that product the article is adulterated within the meaning of the act. The statute with respect to "adulteration" and "misbranding" has its own glossary. We can not, therefore, assume that simply because a prepared "food" has its formula and distinctive name, it is not, as such, "adulterated." In the case of confectionery, it is plain that the article may be "adulterated," although it is made in strict accordance with some formula and bears a fanciful trade name, if in fact it contains an "ingredient deleterious or detrimental to health, or any vinous, malt, or spiriuous liquor or compound or narcotic drug." And the context clearly indicates that with respect to articles of food the ordinary meaning of "adulteration" can not be regarded as controlling.

(*b*) The provision in section 7, subdivision fifth, assumes that the substance which renders the article injurious, and the introduction of which causes "adulteration," is an ingredient of the article. It must be an "added" ingredient; but it is still an ingredient. Component parts, or constituents, of the article which is the subject of the described traffic are thus not excluded but are included in the definition. The article referred to in subdivision fifth is the article sought to be made an article of commerce—the article which "contains" the ingredient.

(*c*) "Adulteration" is not to be confused with "misbranding." The fact that the provisions as to the latter require a statement of certain substances if contained in an article of food, in order to avoid "misbranding" does not limit the explicit provisions of section 7 as to adulteration. Both provisions are operative. Had it been the intention of Congress to confine its definition of adulteration to the introduction of the particular substances specified in the section as to misbranding, it can not be doubted that this would have been stated, but Congress gave a broader description of ingredients in defining "adulteration." It is "any" added poisonous or "other added deleterious ingredients," provided it "may render such article injurious to health."

(*d*) Proprietary foods, sold under distinctive names, are within the purview of the provision. Not only is "food" defined as including articles used for food or drink "whether simple, mixed, or compound," but the intention to include "proprietary foods" sold under distinctive names is manifest from the provisos in section 8 which the claimant invokes. "Mixtures or compounds" which satisfy the first paragraph of the proviso, are not only "articles of food," but are to enjoy the stated immunity only in case they do "not contain any added poisonous or deleterious ingredients." By the concluding clause of section 8 it is provided that nothing in the act shall be construed to require manufacturers of "proprietary foods" to disclose "their trade formulas" except in so far as the provisions of the act "may require to secure freedom from adulteration or misbranding," and the immunity is conditioned upon the fact that such foods "contain no unwholesome added ingredient." Thus the statute contemplates that mixtures or compounds manufactured by those having trade formulas, and bearing distinctive names, may nevertheless contain "added ingredients" which are poisonous or deleterious and may make the article injurious, and if so, the article is not taken out of the condemnation of section 7, subdivision fifth.

(*e*) Again, articles of food including "proprietary foods" which fall within this condemnation are not saved because they were already on the market when the statute was passed. The act makes no such distinction; and it is to be observed that the proviso of section 8 explicitly refers to "mixtures or compounds which may be now, or from time to time hereafter known, as articles of food." Nor does the length of the period covered by the traffic, or its extent, affect the question if the article is in fact adulterated within the meaning of the act.

Having these considerations in mind, we deem it to be clear that, whatever difficulties there may be in construing the provision, the claimant's argument proves far too much. We are not now dealing with the question whether the caffeine did, or might, render the article in question injurious; that is a separate inquiry. The fundamental contention of the claimant, as we have seen, is that a constituent of a food product having a distinctive name can not be an "added" ingredient. In such case the standard is said to be the food product itself which the name designates. It must be, it is urged, this "finished product" that is "adulterated." In that view, there would seem to be no escape from the conclusion that, however poisonous or deleterious the introduced ingredient might be, and however injurious its effect, if it be made a constituent of a product having its own distinctive name it is not within the provision. If this were so, the statute would be reduced to an absurdity. Manufacturers would be free, for example, to put arsenic or strychnine or other poisonous or deleterious ingredients with an unquestioned injurious effect into compound articles of food, provided the compound were made according to formula and sold under some fanciful name which would be distinctive. When challenged upon the ground that the poison was an "added" ingredient, the answer would be that without it the so-called food product would not be the product described by the name. Further, if an article purporting to be an ordinary food product sold under its ordinary name were condemned because of some added deleterious ingredient, it would be difficult to see why the same result could not be attained with impunity by composing a formula and giving a distinctive name to the article with the criticized substance as a component part. We think that an analysis of the statute shows such a construction of the provision to be inadmissible. Certain incongruities may follow from any definition of the word "added," but we can not conclude that it was the intention of Congress to afford immunity by the simple choice of a formula and a name. It does not seem to us to be a reasonable construction that in the case of "proprietary foods" manufactured under secret formulas Congress was simply concerned with additions to what such formulas might embrace. Undoubtedly it was not desired needlessly to embarrass manufacturers of "proprietary foods" sold under distinctive names, but it was not the purpose of the act to protect articles of this sort regardless of their character. Only such food products as contain "no unwholesome added ingredient" are within the saving clause, and in using the words quoted we are satisfied that Congress did not make the proprietary article its own standard.

Equally extreme and inadmissible is the suggestion that where a "proprietary food" would not be the same without the harmful ingredient, to eliminate the latter would constitute an "adulteration" under section 7, sub-

division third, by the abstraction of a "valuable constituent." In that subdivision Congress evidently refers to articles of food which normally are not within the condemnation of the act. Congress certainly did not intend that a poisonous or deleterious ingredient which made a proprietary food an enemy to the public health should be treated as a "valuable constituent," or to induce the continued use of such injurious ingredients by making their elimination an adulteration subject to the penalties of the statute.

It is apparent, however, that Congress in using the word "added" had some distinction in view. In the Senate bill (for which the measure as adopted was a substitute) there was a separate clause relating to "liquors," providing that the article should be deemed to be adulterated if it contained "any added ingredient of a poisonous or deleterious character"; while in the case of food (which was defined as excluding liquors) the article was to be deemed to be "adulterated" if it contained "any added poisonous or other ingredient which may render such article injurious to human health." (Cong. Rec., 59th Cong., 1st sess., vol. 40, p. 897.) In explaining the provision as to "liquors," Senator Heyburn, the chairman of the Senate committee having the bill in charge, stated to the Senate (*Id.*, p. 2647): "The word 'added,' after very mature consideration by your committee, was adopted because of the fact that there is to be found in nature's products as she produces them poisonous substances to be determined by analysis. Nature has so combined them that they are not a danger or an evil—that is, so long as they are left in the chemical connection in which nature has organized them; but when they are extracted by the artificial processes of chemistry they become a poison. You can extract poison from grain or its products and when it is extracted it is a deadly poison; but if you leave that poison as nature embodied it in the original substances it is not a dangerous poison or an active agency of poison at all. So, in order to avoid the threat that those who produce a perfectly legitimate article from a natural product might be held liable because the product contained nature's poison it was thought sufficient to provide against the adding of any new substance that was in itself a poison, and thus emphasizing the evils of existing conditions in nature's product. That is the reason the word 'added' is in the bill. Fusel oil is a poison. If you extract it, it becomes a single active agency of destruction, but allow it to remain in the combination where nature has placed it, and while it is nominally a poison, it is a harmless one, or comparatively so." For the Senate bill the House of Representatives substituted a measure which had the particular provisions now under consideration in substantially the same form in which they were finally enacted into law. (Sec. 7, subd. fifth; sec. 8, subd. fourth, provisos.) And the committee of the House of Representatives in reporting this substituted measure said (H. R. Report No. 2118, 59th Cong., 1st sess., pp. 6. 7, 11): "The purpose of the pending measure is not to compel people to consume particular kinds of foods. It is not to compel manufacturers to produce particular kinds or grades of foods. One of the principal objects of the bill is to prohibit in the manufacture of foods intended for interstate commerce the addition of foreign substances poisonous or deleterious to health. The bill does not relate to any natural constituents of food products which are placed in the foods by nature itself. It is well known that in many kinds of foods in their natural state some quantity of poisonous or deleterious ingredients exist. How far these substances may be deleterious to health when the food articles containing them are consumed may be a subject of dispute between the scientists, but the bill reported does not in any way consider that question. If, however, poisonous or deleterious substances are added by man to the food product, then the bill declares the article to be adulterated and forbids interstate traffic."

This statement throws light upon the intention of Congress. Illustrations are given to show possible incongruous results of the test, but they do not outweigh this deliberate declaration of purposes; nor do we find in the subsequent legislative history of the substituted measure containing the provision any opposing statement as to the significance of the phrase. It must also be noted that some of the illustrations which are given lose their force when it is remembered that the statutory ban (sec. 7, subd. fifth) by its explicit terms only applies where the added ingredient may render the article injurious to health. See *United States* v. *Lexington Mills Co.*, *supra*. It is urged that whatever may be said of natural food products, or simple food products, to which some addition is made, a "proprietary food" must necessarily be "something else than the simple or natural article"; that it is an "artificial preparation." It is insisted that every ingredient in such a compound can not be

deemed to be an "added" ingredient. But this argument, and the others that are advanced, do not compel the adoption of the asserted alternative as to the saving efficacy of the formula. Nor can we accept the view that the word "added" should be taken as referring to the quantity of the ingredient used. It is added ingredient which the statute describes, not added quantity of the ingredient, although of course quantity may be highly important in determining whether the ingredient may render the article harmful, and experience in the use of ordinary articles of food may be of greatest value in dealing with such questions of fact.

Congress, we think, referred to ingredients artifically introduced; these it described as "added." The addition might be made to a natural food product or to a compound. If the ingredient thus introduced was of the character and had the effect described, it was to make no difference whether the resulting mixture or combination was or was not called by a new name or did or did not constitute a proprietary food. It is said that the preparation might be "entirely new." But Congress might well suppose that novelty would probably be sought by the use of such ingredients, and that this would constitute a means of deception and a menace to health from which the public should be protected. It may also have been supposed that, ordinarily, familiar food bases would be used for this purpose. But, however, the compound purporting to be an article of food might be made up, we think that it was the intention of Congress that the artificial introduction of ingredients of a poisonous or deleterious character which might render the article injurious to health should cause the prohibition of the statute to attach.

In the present case the article belongs to a familiar group; it is a syrup. It was originally called "Coca Cola Syrup and Extract." It is produced by melting sugar, the analysis showing that 52.64 per cent of the product is sugar and 42.63 per cent is water. Into the syrup thus formed by boiling the sugar there are introduced coloring, flavoring, and other ingredients, in order to give the syrup a distinctive character. The caffeine, as has been said, is introduced in the second or third "melting." We see no escape from the conclusion that it is an "added" ingredient within the meaning of the statute.

Upon the remaining question whether the caffeine was a poisonous or deleterious ingredient which might render the article injurious to health there was a decided conflict of competent evidence. The Government's experts gave testimony to the effect that it was, and the claimant introduced evidence to show the contrary. It is sufficient to say that the question was plainly one of fact which was for the consideration of the jury. (See *443 Cans of Egg Product*, 226 U. S., 172, 183.

Second. As to "*misbranding.*" In the second count it was charged that the expression "Coca Cola" represented the presence in the product of the substances coca and cola, and that it contained "no coca and little if any cola." So far as "cola" was concerned the charge was vague and indefinite, and this seems to have been conceded by the Government at the beginning of the trial. With respect to "coca," there was evidence on the part of the Government tending to show that there was nothing in the product obtained from the leaves of the coca plant, while on behalf of the claimant it was testified that the material called "Merchandise No. 5" (one of the ingredients) was obtained from both coca leaves and cola nuts. It was assumed on the motion for a peremptory instruction that there might be a disputed question of fact as to whether the use of the word "coca" is to be regarded "intrinsically and originally" as stating or suggesting the presence of "some material element or quality" derived from coca leaves, and it was also assumed that the evidence might be deemed to be conflicting with respect to the question whether the product actually contained anything so derived. (191 Fed., pp. 438, 439.) But these issues of fact were considered not to be material. On this branch of the case the claimant succeeded upon the ground that its article was within the protection of the proviso in section 8 as one known "under its own distinctive name." (215 Fed., p. 544.)

Section 8 (*ante*, p. 377), in its fourth specification as to "food," provides that the article shall be deemed to be "misbranded" "if the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein which * * * shall be false or misleading in any particular." Then follows the proviso in question, that an article not containing any added poisonous or deleterious ingredients "shall not be deemed to be * * * misbranded" in the case of "mixtures or compounds which may be now or from time to time hereafter known as articles of food, under

their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article," if the name is accompanied with a statement of the place where the article has been produced.[1]

A distinctive name is a name that distinguishes. It may be a name in common use as a generic name, e. g., coffee, flour, etc. Where there is a trade description of this sort by which a product of a given kind is distinctively known to the public, it matters not that the name had originally a different significance. Thus, soda water is a familiar trade description of an article which now, as is well known, rarely contains soda in any form. Such a name is not to be deemed either "misleading" or "false," as it is in fact distinctive. But unless the name is truly distinctive, the immunity can not be enjoyed; it does not extend to a case where an article is offered for sale "under the distinctive name of another article." Thus, that which is not coffee, or is an imitation of coffee, can not be sold as coffee; and it would not be protected by being called "X's Coffee." Similarly, that which is not lemon extract could not obtain immunity by being sold under the name of "Y's Lemon Extract." The name so used is not "distinctive," as it does not appropriately distinguish the product; it is an effort to trade under the name of an article of a different sort. So, with respect to "mixtures or compounds," we think that the term "another article" in the proviso embraces different compounds from the compound in question. The aim of the statute is to prevent deception, and that which appropriately describes a different compound can not secure protection as a "distinctive name."

A "distinctive name" may also, of course, be purely arbitrary or fanciful, and thus, being the trade description of the particular thing, may satisfy the statute, provided the name has not already been appropriated for something else so that its use would tend to deceive.

If, in the present case, the article had been named "Coca," and it were found that the name was actually descriptive in the sense that it fairly implied that the article was derived from the leaves of the coca plant, it could not be said that this was "its own distinctive name" if in fact it contained nothing so derived. The name, if thus descriptive, would import a different product from the one to which it was actually affixed. And, in the case supposed, the name would not become the "distinctive name" of a product without any coca ingredient unless in popular acceptation it came to be regarded as identifying a product known to be of that character. It would follow that the mere sale of the product under the name "Coca," and the fact that this was used as a trade designation of the product, would not suffice to show that it had ceased to have its original significance if it did not appear that it had become known to the public that the article contained nothing derived from coca. Until such knowledge could be attributed to the public the name would naturally continue to be descriptive in the original sense. Nor would it be controlling that at the time of the adoption of the name the coca plant was known only to foreigners and scientists, for if the name had appropriate reference to that plant and to substances derived therefrom, its use would primarily be taken in that sense by those who did know or who took pains to inform themselves of its meaning. Mere ignorance on the part of others as to the nature of the composition would not change the descriptive character of the designation. The same conclusion

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[1] Among the departmental regulations (adopted in October, 1906, pursuant to section 3, for the enforcement of the act) is regulation 20, with respect to "distinctive names" under section 8, as follows:

"(*a*) A 'distinctive name' is a trade, arbitrary, or fancy name which clearly distinguishes a food product, mixture, or compound from any other food product, mixture, or compound.

"(*b*) A distinctive name shall not be one representing any single constituent of a mixture or compound.

"(*c*) A distinctive name shall not misrepresent any property or quality of a mixture or compound.

"(*d*) A distinctive name shall give no false indication of origin, character, or place of manufacture, nor lead the purchaser to suppose that it is any other food or drug product."

Regulation 27 is as follows:

"(*a*) The terms 'mixtures' and 'compounds' are interchangeable and indicate the results of putting together two or more food products.

"(*b*) These mixtures or compounds shall not be imitations of other articles, whether simple, mixed, or compound, or offered for sale under the name of other articles. They shall bear a distinctive name and the name of the place where the mixture or compound has been manufactured or produced.

"(*c*) If the name of the place be one which is found in different States, Territories, or countries, the name of the State, Territory, or country, as well as the name of the place, must be stated."

would be reached if the single name "Cola" had been used as the name of the product and it were found that in fact the name imported that the product was obtained from the cola nut. The name would not be the distinctive name of a product not so derived until in usage it achieved that secondary significance.

We are thus brought to the question whether if the names "Coca" and "Cola" were respectively descriptive, as the Government contends, a combination of the two names constituted a "distinctive name" within the protection of the proviso in case either of the described ingredients was absent. It is said that "coca" indicates one article and "cola" another, but that the two names together did not constitute the distinctive name of any other substance or combination of substances. The contention leads far. To take the illustration suggested in argument it would permit a manufacturer, who could not use the name chocolate to describe that which was not chocolate, or vanilla to describe that which was not vanilla, to designate a mixture as "Chocolate-Vanilla," although it was destitute of either or both, provided the combined name had not been previously used. We think that the contention misses the point of the proviso. A mixture or compound may have a name descriptive of its ingredients or an arbitrary name. The latter (if not already appropriated) being arbitrary, designates the particular product. Names, however, which are merely descriptive of ingredients are not primarily distinctive names save as they appropriately describe the compound with such ingredients. To call the compound by a name descriptive of ingredients which are not present is not to give it "its own distinctive name"—which distinguishes it from other compounds—but to give it the name of a different compound. That, in our judgment, is not protected by the proviso, unless the name has achieved a secondary significance as descriptive of a product known to be destitute of the ingredients indicated by its primary meaning.

In the present case we are of opinion that it could not be said as matter of law that the name was not primarily descriptive of a compound with coca and cola ingredients, as charged. Nor is there basis for the conclusion that the designation had attained a secondary meaning as the name of a compound from which either coca or cola ingredients were known to be absent; the claimant has always insisted, and now insists, that its product contains both. But if the name was found to be descriptive, as charged, there was clearly a conflict of evidence with respect to the presence of any coca ingredient. We conclude that the court erred in directing a verdict on the second count.

The judgment is reversed and the cause is remanded for further proceedings in conformity with this opinion.

It is so ordered.

Mr. Justice McReynolds took no part in the consideration or decision of this case.

CARL VROOMAN,
Acting Secretary of Agriculture.

4802. Adulteration of frozen egg product. U. S. v. Robert Smithson. Plea of guilty. Fine, $50 and costs. (F. & D. No. 1369. I. S. No. 2156-b.)

On August 24, 1910, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information, and, on March 28, 1913, and July 27, 1915, amended informations, against Robert Smithson, Chicago, Ill., alleging shipment by said defendant, in violation of the Food and Drugs Act, on November 15, 1909, from the State of Illinois into the State of Massachusetts, of a quantity of frozen egg product which was adulterated.

Bacteriological examination of a sample of the article by the Bureau of Chemistry of this department showed the presence of an excessive number of bacteria, including members of the *B. coli* group in sufficient numbers to render the product unfit for human consumption.

Adulteration of the article was alleged in the information for the reason that when it was so shipped and delivered for shipment as, aforesaid, it consisted in part of a filthy animal substance which rendered it unfit for food; for the further reason that it consisted wholly of a decomposed animal substance which rendered it unfit for food; for the further reason that it consisted in part of a decomposed animal substance which rendered it unfit for food; and for the further reason that it consisted in part of a putrid animal substance which rendered it unfit for food.

On January 27, 1916, the defendant entered a plea of guilty to the information as finally amended, and on February 11, 1916, the court imposed a fine of $50 and costs.

CARL VROOMAN,
Acting Secretary of Agriculture.

4803. Adulteration of frozen egg product. U. S. v. Robert Smithson. Plea of guilty. Fine, $50 and costs. (F. & D. No. 1604. I. S. No. 10378–b.)

On August 24, 1910, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information, and, on March 28, 1913, and July 27, 1915, amended informations, against Robert Smithson, Chicago, Ill., alleging shipment by said defendant, in violation of the Food and Drugs Act, on March 12, 1910, from the State of Illinois into the State of New York, of a quantity of frozen egg product which was adulterated.

Bacteriological examination of a sample of the article by the Bureau of Chemistry of this department showed the presence of an excessive number of organisms, including members of the *B. coli* group, in such numbers as to render the product unfit for human consumption.

Adulteration of the article was alleged in the information for the reason that when it was so shipped and delivered for shipment, as aforesaid, it consisted in part of a filthy animal substance which rendered it unfit for food; for the further reason that it consisted wholly of a decomposed animal substance which rendered it unfit for food; for the further reason that it consisted in part of a decomposed animal substance which rendered it unfit for food; and for the further reason that it consisted in part of a putrid animal substance which rendered it unfit for food.

On January 27, 1916, the defendant entered a plea of guilty to the information as finally amended, and on February 11, 1916, the court imposed a fine of $50 and costs.

CARL VROOMAN,
Acting Secretary of Agriculture.

4804. Adulteration of frozen egg product. U. S. v. Robert Smithson. Plea of guilty. Fine, $50 and costs. (F. & D. No. 1763. I. S. Nos. 18440-b, 18445-b.)

On November 5, 1910, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information, and on March 28, 1913, and July 27, 1915, amended informations, against Robert Smithson, Chicago, Ill., alleging shipment by said defendant, in violation of the Food and Drugs Act, on May 7, 1910, from the State of Illinois into the State of New York, of a quantity of frozen egg product which was adulterated.

Bacteriological examination of samples of the article by the Bureau of Chemistry of this department showed the presence of an excessive number of organisms, including members of the *B. coli* group and streptococci.

Adulteration of the article was alleged in the information for the reason that when it was so shipped and delivered for shipment, as aforesaid, it consisted in part of a filthy animal substance which rendered it unfit for food; for the further reason that it consisted wholly of a decomposed animal substance which rendered it unfit for food; for the further reason that it consisted in part of a decomposed animal substance which rendered it unfit for food; and for the further reason that it consisted in part of a putrid animal substance which rendered it unfit for food.

On January 27, 1916, the defendant entered a plea of guilty to the information, as finally amended, and on February 11, 1916, the court imposed a fine of $50 and costs.

CARL VROOMAN,
Acting Secretary of Agriculture.

4805. Adulteration of confectionery. U. S. v. 1 Barrel of Cocoa Almonds. Consent decree of condemnation, forfeiture, and destruction. (F. & D. No. 2532. I. S. No. 12545–c. S. No. 909.)

On April 3, 1911, the United States attorney for the District of Rhode Island, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of a barrel of confectionery purporting to be cocoa almonds, remaining unsold in the original unbroken package at Providence, R. I., alleging that the article had been shipped, on or about February 20, 1911, by the New England Confectionery Co., Boston, Mass., and transported from the State of Massachusetts into the State of Rhode Island, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that it was coated with and contained a certain mineral substance, to wit, talc.

On March 28, 1916, the cause having come on to be heard upon the libel and answer of the claimant, the New England Confectionery Co., a corporation, and it appearing to the court that the issues in the case had been determined by the decision of the Circuit Court of Appeals for the First Circuit in the case of United States *v.* 131 Boxes of Candy Eggs, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN,
Acting Secretary of Agriculture.

4806. Adulteration of confectionery. U. S. v. 1 Barrel of Jelly Beans. Consent decree of condemnation, forfeiture, and destruction. (F. & D. No. 2534. I. S. No. 12543–c. S. No. 908.)

On March 23, 1911, the United States attorney for the District of Rhode Island, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 1 barrel of confectionery, purporting to be jelly beans, remaining unsold in the original unbroken package at Providence, R. I., alleging that the article had been shipped by the National Candy Co., doing business at Buffalo, N. Y., and transported from the State of New York into the State of Rhode Island, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that it was coated with and contained a certain mineral substance, to wit, talc.

On March 28, 1916, the cause having come on to be heard upon the libel and answer of the claimant, the National Candy Co. aforesaid, and it appearing to the court that the issues in the case had been determined by the decision of the Circuit Court of Appeals for the First Circuit, in the case of U. S. *v.* 131 Boxes of Candy Eggs, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN,
Acting Secretary of Agriculture.

4807. Adulteration of confectionery. U. S. v. 2 Barrels of Jelly Beans. Consent decree of condemnation, forfeiture, and destruction. (F. & D. No. 2564. I. S. Nos. 12552–c, 12555–c. S. No. 918.)

On April 3, 1911, the United States attorney for the District of Rhode Island, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 2 barrels of confectionery, purporting to be jelly beans, remaining unsold in the original unbroken packages at Providence, R. I., alleging that the article had been shipped on or about February 15, 1911, and March 1, 1911, by the New England Confectionery Co., Boston, Mass., and transported from the State of Massachusetts into the State of Rhode Island, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that it was coated with and contained a certain mineral substance, to wit, talc.

On March 28, 1916, the cause having come on to be heard upon the libel and answer of the claimant, the New England Confectionery Co., aforesaid, and it appearing to the court that the issues in the case had been determined by the decision of the Circuit Court of Appeals for the First Circuit, in the case of U. S. *v.* 131 Boxes of Candy Eggs, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN,
Acting Secretary of Agriculture.

4808. Alleged adulteration and misbranding of extract of peppermint and orange extract. U. S. v. Thomson & Taylor Spice Co., a corporation. Tried to the court and a jury. Verdict of not guilty by direction of the court. (F. & D. No. 2621. I. S. Nos. 8349–c, 8350–c.)

On July 27, 1912, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information and on February 23, 1916, an amendment to the information against the Thomson & Taylor Spice Co., a corporation, Chicago, Ill., alleging shipment by said company, in violation of the Food and Drugs Act, on May 20, 1910, from the State of Illinois into the State of Missouri, of a quantity of orange extract, and on December 1, 1910, from the State of Illinois into the State of Missouri, of a quantity of extract of peppermint, each of which was alleged to be adulterated and misbranded.

Analyses of samples of these articles by the Bureau of Chemistry of this department showed the following results:

	Peppermint extract.	Orange extract.
Specific gravity at 15.6° C./15.6° C	0.9345	0.9506
Alcohol (per cent by volume)	48.28	40.64
Oil:		
(*a*) By polarization (per cent by volume)	-------	0.1
(*b*) By precipitation (per cent by volume)	1.4	None.
Total aldehydes calculated as citral (per cent)	-------	0.03
Citral (per cent)	-------	0.01

Adulteration of the orange extract was alleged in the amendment to the information for the reason that terpeneless extract of orange is a flavoring extract prepared by shaking not less than 5 per cent by volume of oil of orange with dilute alcohol, or by dissolving terpeneless oil of orange in dilute alcohol, and corresponds in flavoring strength to orange extract; whereas, a certain dilute terpeneless extract of orange containing less than one-half the flavoring strength of terpeneless orange extract had been substituted in part for genuine full-strength terpeneless extract of orange, which the said article of food purported to be; for the further reason that a certain dilute terpeneless extract of orange as aforesaid had been substituted wholly for genuine full-strength terpeneless extract of orange which the article of food aforesaid purported to be; and for the further reason that a certain dilute terpeneless extract of orange as aforesaid had been mixed and packed with the article of food aforesaid in such a manner as to reduce, lower, and injuriously affect its quality or strength.

Misbranding of this article was alleged for the reason that each of the bottles containing it bore a label containing a statement in words and figures as follows, to wit, "1 oz. Full measure Liberty Bell Terpeneless Orange Flavor 40% Alcohol Manufactured For Parker-Wilson Grocer Co. St. Joseph, Mo.," which said statement on the label was false and misleading in that it representetd to the purchaser that the product was a genuine terpeneless orange extract conforming to the commercial standard for such article of food, to wit, a terpeneless orange extract containing not less than 5 per cent by volume of oil of orange, whereas, in truth and in fact, said article contained not to exceed 0.1 per cent by volume of oil of orange.

Adulteration of the extract of peppermint was alleged for the reason that oil of peppermint in the quantity of not less than 3 per cent by volume is an essential ingredient of the article of food known as extract of peppermint;

whereas a certain dilute extract of peppermint containing not more than 1.4 per cent by volume of oil of peppermint had been substituted in part for the aforesaid quantity of oil of peppermint in the aforesaid article of food; for the further reason that a certain dilute extract of peppermint as aforesaid had been substituted wholly for the aforesaid quantity of oil of peppermint in the article of food; and for the further reason that a certain dilute extract of peppermint as aforesaid had been mixed and packed with the article in such a manner as to reduce, lower, and injuriously affect its quality and strength.

Misbranding of this article was alleged for the reason that each of the bottles containing it bore a label containing a statement in words and figures as follows, to wit, "Liberty Bell Extract of Peppermint Packed for Parker Grocer Co., St. Joseph, Mo.," which said statement on the label was false and misleading, in that it represented to the purchaser that the product was a true extract of peppermint, conforming to the commercial standard for such article of food, to wit, an extract of peppermint containing not less than 3 per cent by volume of oil of peppermint; whereas, in truth and in fact, the article of food aforesaid contained not to exceed 1.4 per cent by volume of peppermint oil.

On December 3, 1915, the demurrer to the information was heard by the court and overruled. On February 25, 1916, the case having come on for trial before the court and a jury, at the conclusion of the opening statement of counsel for the Government, the court directed the jury to return a verdict of not guilty, for the reason that in the opinion of the court the facts offered to be proven by the Government did not constitute a violation of the Food and Drugs Act.

CARL VROOMAN,
Acting Secretary of Agriculture.

1220°—17——2

4809. Misbranding of orange curaçao. U. S. v. The E. G. Lyons & Raas Co., a corporation. Plea of guilty. Fine, $25. (F. & D. No. 4300. I. S. No. 2125–d.)

On January 9, 1914, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against The E. G. Lyons & Raas Co., a corporation, San Francisco, Cal., alleging shipment by said company, in violation of the Food and Drugs Act, on or about January 11, 1911, from the State of California into the State of Oregon, of a quantity of orange curaçao which was misbranded. The article was labeled: "Orange Curaçao E. Dubreuil & Fils Distributors San Francisco New York Guaranteed under Serial Number 16701." (Design of lions, crown, and unicorn) "E. Dubreuil & Fils Curaçao San Francisco, Cal. Distributors."

Investigation of the article by a representative of the Bureau of Chemistry of this department showed that the same was manufactured by the defendant company in the State of California.

Misbranding of the article was alleged in the information for the reason that it was labeled and branded as aforesaid so as to deceive and mislead the purchaser thereof, in that the statement "Orange Curaçao E. Dubreuil & Fils Distributors," taken in connection with the design of two lions, a crown, and a unicorn, borne on the label, created the impression that the article of food was of foreign origin, whereas, in truth and in fact, it was an article of domestic manufacture. Misbranding was alleged for the further reason that the label and brand on the article was false and misleading, in that the statement "Orange Curaçao E. Dubreuil & Fils Distributors," taken in connection with the design of two lions, a crown, and a unicorn, borne on the label, misled and deceived the purchaser thereof into the belief that the article of food was of foreign origin, whereas, in truth and in fact, it was an article of domestic manufacture.

On June 14, 1915, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $25.

CARL VROOMAN,
Acting Secretary of Agriculture.

4810. Adulteration and misbranding of pepper. U. S. v. Wixon Spice Co., a corporation. Plea of guilty. Judgment against the defendant company for costs. (F. & D. No. 4401. I. S. No. 15441–d.)

On July 31, 1914, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Wixon Spice Co., a corporation, Chicago, Ill., alleging shipment by said company, in violation of the Food and Drugs Act, on September 19, 1914, from the State of Illinois into the State of Ohio, of a quantity of ground black pepper which was adulterated and misbranded. The article was labeled "Ground Black Pepper."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it contained 18.81 per cent of crude fiber.

Adulteration of the article was alleged in the information for the reason that when it was so shipped as aforesaid a substance, to wit, pepper shells, had been mixed and packed with the article so as to reduce and lower and injuriously affect the quality and strength thereof and had been substituted wholly for genuine ground black pepper. Adulteration was alleged for the further reason that a substance, to wit, pepper shells, had been substituted in part for genuine ground black pepper.

Misbranding was alleged for the reason that each of the boxes containing the article bore a label in words as follows, to wit, "Ground Black Pepper," which said statement appearing on the labels was false and misleading in that said statement represented to the purchaser that the article of food was genuine ground black pepper; and for the further reason that said statement deceived and misled the purchaser in that said statement represented to the purchaser that the article was genuine ground black pepper, whereas, in truth and in fact, each of the boxes contained a quantity of ground black pepper, together with an excessive amount of pepper shells.

On April 27, 1916, the defendant company entered a plea of guilty to the information, and the court entered judgment against it for the costs of the proceeding.

CARL VROOMAN,
Acting Secretary of Agriculture.

4811. Alleged adulteration and misbranding of mustard. U. S. v. Thomson & Taylor Spice Co., a corporation. Demurrers to information sustained. (F. & D. Nos. 4481, 4774, 4775, 5014. I. S. Nos. 19310–d, 19559–d, 17095–d, 942–e.)

On November 14, 1914, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district four informations against Thomson & Taylor Spice Co., a corporation, Chicago, Ill., alleging:

(1) The sale by said defendant company, on February 19, 1912, under a guaranty that the article was not adulterated or misbranded within the meaning of the Food and Drugs Act, of a quantity of mustard which was alleged to be an adulterated and misbranded article of food within the meaning of said act, and which said article, without having been altered in any manner, was shipped by the purchaser thereof, on March 9, 1912, from the State of Illinois into the State of Iowa. This article was labeled: (Principal label) "Guaranteed Absolutely Pure Mustard Packed Expressly for Harper Bros. & Co. Chicago." (Reverse label) "16 Ounces to the Pound The Guaranteed Label Brand of Spices put up under our signature are Absolutely Pure and ground from the best spices grown. All goods packed under this brand are positively guaranteed. Pure and full weight. Established 1874. Packed Expressly for Harper Bros. & Co., Wholesale Grocers Chicago."

(2) The shipment by said company, on April 5, 1912, from the State of Illinois into the State of Wisconsin, of a quantity of mustard which was alleged to be adulterated and misbranded. This article was labeled: "4 ounces Net Weight Juneau Brand Strictly Pure Mustard. Packed for John Hoffmann & Sons Co. Milwaukee, Wis."

(3) The shipment by said company, on May 21, 1912, from the State of Illinois into the State of Wisconsin, of a quantity of mustard which was alleged to be adulterated and misbranded. This article was labeled: "Pere Marquette Spices Mustard P & N Packed for Plumb & Nelson Co., Wholesale Grocers. Manitowoc, Wis. Warranted Absolutely Pure and to conform to Pure Food Laws of any State. 6 Lbs. Net Weight Guarantee Guaranteed to comply with the U. S. Food and Drug Act, June 30, 1906, and all state Pure Food Laws. Mustard."

(4) The shipment by said company, on September 5, 1912, from the State of Illnois into the State of Ohio, of a quantity of mustard which was alleged to be adulterated and misbranded. This article was labeled: (On original carton) "Red Bird Brand Strictly Pure Mustard" (Device, red bird) "Quality Guaranteed." (On side) "Packed for The Midland Grocery Co. of Ohio." (On end) "Two ounces net weight."

Examination of samples from each of the shipments by the Bureau of Chemistry of this department showed that each contained a large amount of charlock, or wild mustard.

Adulteraton of the article in each of the consignments was alleged in the informations for the reason that, when it was shipped as aforesaid, another substance, to wit, wild mustard, had been substituted wholly for pure mustard; for the further reason that another substance, to wit, wild mustard, had been substituted in part for pure mustard; for the further reason that another substance, to wit, charlock, had been substituted wholly for pure mustard; and for the further reason that another substance, to wit, charlock, had been substituted in part for pure mustard. Adulteration of the article in the shipments of April 5, 1912, May 21, 1912, and September 5, 1912, was alleged in three of the informations for the further reason that another substance, to wit, charlock, had been mixed and packed with pure mustard in such a manner as to reduce, lower, and injuriously affect the quality and strength of pure

mustard aforesaid, which the article purported to be; and for the further reason that another substance, to wit, wild mustard, had been mixed and packed with pure mustard in such a manner as to reduce, lower, and injuriously affect the quality and strength of pure mustard, which the article of food purported to be.

Misbranding of the article in all four of the shipments was alleged in the informations for the reason that the articles in each shipment were labeled, respectively, as aforesaid, which said statement on the label appearing on each of the cans was false and misleading in that the statement on the label, "Pure Mustard" (or "Mustard. Warranted absolutely pure," as the case might be) represented to the purchaser that the article of food was pure mustard; and for the further reason that said statement on the label misled and deceived the purchaser in that the statement "Pure Mustard" (or "Mustard. Warranted absolutely pure," as the case might be) represented to the purchaser that the article was pure mustard, whereas, in truth and in fact, it was not pure mustard, but a mixture of mustard and charlock. Misbranding of the article contained in the shipments of April 5, 1912, May 21, 1912, and September 5, 1912, was alleged for the further reason that the articles were labeled respectively as aforesaid, which said statement on the labels appearing on the packages was false and misleading in that the statement on the label, "Pure Mustard," represented to the purchaser that the article of food was pure mustard; and for the further reason that said statement on the label deceived and misled the purchaser in that the statement, "Pure Mustard," represented to the purchaser that the article of food was pure mustard, whereas, in truth and in fact, it was not pure mustard, but was a mixture of mustard and wild mustard.

On October 22, 1915, the defendant company filed demurrers to the informations, and on December 3, 1915, the cases having come on for hearing, the demurrers were sustained. During the progress of the hearing the following remarks in the course of argument by counsel were made by the court (Anderson, J.):

The Court. The question is, whether or not wild mustard is pure mustard.

I must say that to charge that the labeling of it pure mustard, whereas in fact it is wild mustard, could hardly make a case, if wild mustard is mustard. Of course, there may be such a thing as pure wild mustard.

The charge that they violated the law in that they labeled it pure mustard, which you say may be white or black mustard, whereas in truth and in fact it is wild mustard, I don't believe that is good.

Wild mustard is mustard and nothing else. When you use the word "pure" you mean it is mustard and nothing else, has nothing in it but mustard. You have got to use common, ordinary sense when you come to define words. Now, you say he calls this pure mustard whereas in truth and in fact it is wild mustard. He calls it mustard, and nothing else, whereas in truth and in fact it is one kind of mustard. That doesn't make a case.

You could have made a case if they labeled it "pure" and if charlock or wild mustard is not pure mustard, then you have got a case. But any kind of mustard that is mustard, still is pure mustard. They told the truth when they said it is pure; that is, it is pure wild mustard.

I hold that mustard is mustard; that there are two kinds of mustard, wild mustard and mustard that is not wild. I hold that when they say a thing is mustard and it is wild mustard only that that is not a misbranding.

Suppose that a man canned blackberries and he canned wild blackberries and called them pure blackberries; wouldn't they be pure, just as much as if they had been cultivated? The word "pure" means simply without anything else.

I hold that there is such a thing as pure wild mustard.

If charlock means wild mustard, it is the same thing.

I will hold the counts which charge that they labeled it pure mustard, and put into the receptacles, whatever they were, wild mustard, I will hold those counts bad. All counts which charge that they labeled it pure mustard and put in charlock, I hold them bad. You have no difficulty in understanding what my ruling is.

Carl Vrooman,
Acting Secretary of Agriculture.

4812. Adulteration and misbranding of mace. U. S. v. The Woolson Spice Co., a corporation. Plea of nolo contendere. Fine, $25 and costs. (F. & D. No. 4484. I. S. No. 16093–d.)

On January 25, 1914, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Woolson Spice Co., a corporation, Toledo, Ohio, alleging shipment by said company, in violation of the Food and Drugs Act, on or about January 31, 1912, from the State of Ohio into the State of Indiana, of a quantity of mace which was adulterated and misbranded. The article was labeled: "Golden Glow Strictly Pure Mace, 6 pds. net weight, Twin City Grocer Company, Distributors, Elkhart, Ind. 6 lbs. Mace."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it contained a large amount of Bombay mace.

Adulteration of the article was alleged in the information for the reason that a substance, to wit, Bombay mace, had been substituted wholly or in part for the genuine article, mace.

Misbranding was alleged for the reason that the statement, "Strictly Pure Mace," borne on the label was false and misleading because it misled and deceived the purchaser into the belief that the product was pure mace, when, as a matter of fact, it was mace containing about 50 per cent Bombay mace. Misbranding was alleged for the further reason that the article was labeled and branded so as to deceive and mislead the purchaser, being labeled "Strictly Pure Mace," when, as a matter of fact, it was mace containing about 50 per cent of Bombay mace.

On March 4, 1916, the defendant company entered a plea of nolo contendere to the information, and the court imposed a fine of $25 and costs.

CARL VROOMAN,
Acting Secretary of Agriculture.

4813. Adulteration and misbranding of cider or apple champagne. U. S. v. 6 Barrels of Cider or Apple Champagne. Default decree of condemnation and forfeiture. Product ordered sold or destroyed. (F. & D. No. 4523. I. S. No. 4113–e. S. No. 1507.)

On September 16, 1912, the United States attorney for the Southern District of West Virginia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 6 barrels of cider or apple champagne, consigned by the I. S. Fine Corp., Roanoke, Va., remaining unsold in the original unbroken packages at Bluefield, W. Va., alleging that the article had been shipped and transported from the State of Virginia into the State of West Virginia, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled: "Extra Dry Queen Cabinet Sparkling Apple Champagne Bottled only by I. S. Fine Corporation, Roanoke, Virginia Lawful amount of preservative used."

Adulteration of the article was alleged in the libel for the reason that benzoate of soda and carbonic-acid gas had been mixed therewith so as to reduce and lower and injuriously affect its quality and strength.

Misbranding was alleged for the reason that none of the barrels contained "Extra Dry Queen Cabinet Sparkling Apple Champagne," as they purported to contain, as evidenced by the markings on the barrels, but contained a compound or mixture which was a carbonated beverage similar to cider made up or compounded with, among other things, alcohol and benzoate of soda, and the labeling of the barrels as containing "Extra Dry Queen Cabinet Sparkling Apple Champagne" was misleading and false so as to deceive and mislead the purchaser, and was a misbranding within the meaning of the Food and Drugs Act.

On April 19, 1916, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be sold or destroyed by the United States marshal.

CARL VROOMAN,
Acting Secretary of Agriculture.

4814. Misbranding of rice. U. S. v. The William Cluff Co., a corporation. Plea of guilty. Fine, $25. (F. & D. No. 4662. I. S. No. 21665-d.)

On May 25, 1915, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the William Cluff Co., a corporation, San Francisco, Cal., alleging shipment by said company, in violation of the Food and Drugs Act, on or about May 31, 1912, from the State of California into the State of Oregon, of a quantity of rice which was misbranded. The article was labeled: (Principal label) "Coquille, Ore. Yamato Choice Japan Rice Wm. Cluff Co. S. F." (Reverse label) "Coated with Glucose and Talc. Remove by Washing before using."

Examination of a sample of the article by the Bureau of Chemistry of this department showed it to be a domestic-grown rice of the Japan type, coated, and of an average quality. The bag in which the same was shipped was clearly an article of domestic manufacture and unlike the imported Japan bag commonly used by the exporters of rice from Japan.

Misbranding of the article was alleged in the information for the reason that it was labeled and branded as aforesaid so as to deceive and mislead the purchaser thereof, in that by said label and brand the impression was created that the article of food was a foreign product, to wit, a product of Japan, when, in truth and in fact, it was not, but was a domestic-grown rice of the Japan type. Misbranding was alleged for the further reason that the label and brand on the article was false and misleading in that the statement, "Yamato Choice Japan Rice," borne on the label, misled and deceived the purchaser into the belief that the article was a foreign product, to wit, a product of Japan, when, in truth and in fact, it was not, but was a domestic-grown rice of the Japan type.

On June 16, 1915, the defendant company entered its plea of guilty to the information, and the court imposed a fine of $25.

CARL VROOMAN,
Acting Secretary of Agriculture.

4815. Misbranding of coffee. U. S. v. The Jones-Thierbach Co., a corporation. Plea of guilty. Fine, $25. (F. & D. No. 4824. I. S. No. 36753–e.)

On May 25, 1915, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Jones-Thierbach Co., a corporation, San Francisco, Cal., alleging shipment by said company, in violation of the Food and Drugs Act, on or about June 28, 1912, from the State of California into the State of Arizona, of a quantity of coffee which was misbranded. The article was labeled: (On front) "Arab Coffee with Chicory" (Picture of Arab in center) "* * * The contents of this package a mixture of ground coffee and chicory * * * Chas. F. Thierbach Co., San Francisco, California."

Examination of a sample of the article by the Bureau of Chemistry of this department showed that it was composed of about 90 per cent ground Santos and about 10 per cent light roast chicory. The package contained no Arabian coffee.

Misbranding of the article was alleged in the information for the reason that it was labeled and branded as aforesaid, so as to deceive and mislead the purchaser thereof in that by said label and brand the impression was created that the article was a mixture of Arabian coffee and chicory, when, in truth and in fact, it was not coffee grown or produced in Arabia, and mixed with chicory, but was a mixture of South American coffee and chicory. Misbranding was alleged for the further reason that the label and brand on the article was false and misleading in that the statement "Arab Coffee with Chicory," taken in connection with the picture of an Arab borne on the label, misled and deceived the purchaser into the belief that the article was a mixture of Arabian coffee and chicory, whereas, in truth and in fact, it was a mixture of South American coffee and chicory.

On June 15, 1915, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $25.

CARL VROOMAN,
Acting Secretary of Agriculture.

4816 (Supplement to New Jersey 2995). Misbranding of Eckman's Alterative. U. S. v. 7 Cases * * * and 6 Cases * * * of Eckman's Alterative. Decision of the Supreme Court of the United States affirming judgment of the District Court of the United States for the District of Nebraska, which overruled demurrers to the libels for the seizure and condemnation of the product under section 10 of the Food and Drugs Act. (F. & D. Nos. 4875, 4876. I. S. No. 3259-e. S. No. 1612.)

On January 10, 1916, the above-cited case having come on for final disposition in the Supreme Court of the United States upon a writ of error theretofore filed on behalf of the Eckman Manufacturing Co., Chicago, Ill., the judgment of the District Court of the United States for the District of Nebraska, which overruled the demurrers to the libels filed by said company in the lower court, was affirmed by the Supreme Court of the United States, as will more fully appear from the following decision:

Mr. Justice Hughes delivered the opinion of the court.

Libels were filed by the United States, in December, 1912, to condemn certain articles of drugs (known as "Eckman's Alterative") as misbranded in violation of section 8 of the Food and Drugs act. The articles had been shipped in interstate commerce, from Chicago to Omaha, and remained at the latter place unsold and in the unbroken original packages. The two cases present the same questions, the libels being identical save with respect to quantities and the persons in possession. In each case demurrers were filed by the shipper, the Eckman Manufacturing Company, which challenged both the sufficiency of the libels under the applicable provision of the statute and the constitutionality of that provision. The demurrers were overruled, and the Eckman Company having elected to stand on the demurrers, judgments of condemnation were entered.

Section 8 of the Food and Drugs act, as amended by the act of August 23, 1912, c. 352, 37 Stat. 416, provides, with respect to the misbranding of drugs, as follows:

"Sec. 8. That the term 'misbranded' as used herein, shall apply to all drugs or articles of food or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory, or country in which it is manufactured or produced.

"That for the purposes of this act an article shall also be deemed to be misbranded. In case of drugs:

* * * * * * *

"Third. If its package or label shall bear or contain any statement, design, or device regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein which is false and fraudulent."

The amendment of 1912 consisted in the addition of paragraph "Third," which is the provision here involved.

It is alleged in each libel that every one of the cases of drugs sought to be condemned contained twelve bottles, each of which was labeled as follows:

"Eckman's Alterative,—contains twelve per cent. of alcohol by weight, or fourteen per cent. by volume—used as a solvent. For all throat and lung diseases including Bronchitis, Bronchial Catarrh, Asthma, Hay Fever, Coughs and Colds, and Catarrh of the Stomach and Bowels, and Tuberculosis (Consumption) * * * Two dollars a bottle. Prepared only by Eckman Mfg. Co. Laboratory Philadelphia, Penna., U. S. A."

And in every package, containing one of the bottles, there was contained a circular with this statement:

"Effective as a preventative for Pneumonia." "We know it has cured and that it has and will cure Tuberculosis."

The libel charges that the statement "effective as a preventative for pneumonia" is "false, fraudulent and misleading in this, to wit, that it conveys the impression to purchasers that said article of drugs can be used as an effective preventative for pneumonia, whereas, in truth and in fact said article of drugs could not be so used"; and that the statement "we know it has cured" and that it "will cure tuberculosis" is "false, fraudulent, and misleading in this, to wit, that it conveys the impression to purchasers that said article of drugs will cure tuberculosis, or consumption, whereas, in truth and

in fact said article of drugs would not cure tuberculosis, or consumption, there being no medicinal substance nor mixture of substances known at present which can be relied upon for the effective treatment or cure of tuberculosis, or consumption."

The principal question presented on this writ of error is with respect to the validity of the amendment of 1912.

So far it is objected that this measure, though relating to articles transported in interstate commerce, is an encroachment upon the reserved powers of the States, the objection is not to be distinguished in substance from that which was overruled in sustaining the White Slave act, 36 Stat. 825. *Hoke* v. *United States*, 227 U. S. 308. There, after stating that "if the facility of interstate transportation' can be denied in the case of lotteries, obscene literature, diseased cattle and persons, and impure food and drugs, the like facility could be taken away from "the systematic enticement of and the enslavement in prostitution and debauchery of women," the court concluded with the reassertion of the simple principle that Congress is not to be denied the exercise of its constitutional authority over interstate commerce, and its power to adopt not only means necessary but convenient to its exercise, because these means may have the quality of police regulations. *Id.* pp. 322, 323. See *Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S. 196, 215; *Hipolite Egg Co.* v. *United States*, 220 U. S. 45, 57; *Lottery Case*, 188 U. S. 321.

It is urged that the amendment of 1912 does not embrace circulars contained in the package, but only applies to those statements which appear on the package or on the bottles themselves; that is, it is said that the word "contain" in the amendment must have the same meaning in the case of both "package" and "label." Reference is made to the original provision in the first sentence of section 8 with respect to the statements, etc., which the package or label shall "bear." And it is insisted that if the amendment of 1912 covers statements in circulars which are contained in the package it is unconstitutional. Such statements, it is said, are not so related to the commodity as to form part of the commerce which is within the regulating power of Congress.

But it appears from the legislative history of the act that the word "contain" was inserted in the amendment to hit precisely the case of circulars or printed matter placed inside the package, and we think that is the fair import of the provision. Cong. Rec., 62d Cong., 2d sess., Vol. 48, part 11, page 11,322. And the power of Congress manifestly does not depend upon the mere location of the statement accompanying the article, that is, upon the question whether the statement is *on* or *in* the package which is transported in interstate commerce. The further contention that Congress may not deal with the package, thus transported, in the sense of the immediate container of the article as it is intended for consumption, is met by *McDermott* v. *Wisconsin*, 228 U. S. 115. There the court said: "That the word 'package' or its equivalent expression, as used by Congress in sections 7 and 8 in defining what shall constitute adulteration and what shall constitute misbranding within the meaning of the act," (Food & Drugs Act) "clearly refers to the immediate container of the article which is intended for consumption by the public, there can be no question. . . . Limiting the requirements of the act as to adulteration and misbranding simply to the outside wrapping or box containing the packages intended to be purchased by the consumer, so that the importer, by removing and destroying such covering, could prevent the operation of the law on the imported article yet unsold, would render the act nugatory and its provisions wholly inadequate to accomplish the purposes for which it was passed." And, after stating that the requirements of the act thus construed were clearly within the power of Congress over the facilities of interstate commerce, the court added that the doctrine of original packages set forth in repeated decisions, which protected the importer in the right to sell the imported goods, was not "intended to limit the right of Congress, now asserted, to keep the channels of interstate commerce free from the carriage of injurious or fraudulently branded articles and to choose appropriate means to that end." *Id.* pp. 130, 131, 137.

Referring to the nature of the statements which are within the purview of the amendment, it is said that a distinction should be taken between articles that are illicit, immoral, or harmful and those which are legitimate, and that the amendment goes beyond statements dealing with identity or ingredients. But the question remains as to what may be regarded as "illicit" and we find no ground for saying that Congress may not condemn the interstate transportation of swindling preparations designed to cheat credulous sufferers and make such preparations, accompanied by false and fraudulent statements, illicit with respect to interstate commerce, as well as, for example, lottery tickets.

The fact that the amendment is not limited, as was the original statute, to statements regarding identity or composition (*United States* v. *Johnson*, 221 U. S. 488) does not mark a constitutional distinction. The false and fraudulent statement, which the amendment describes, accompanies the article in the package, and thus gives to the article its character in interstate commerce.

Finally, the statute is attacked upon the ground that it enters the domain of speculation (*American School of Magnetic Healing* v. *McAnnulty*, 187 U. S. 94) and by virtue of consequent uncertainty operates as a deprivation of liberty and property without due process of law in violation of the Fifth Amendment of the Constitution, and does not permit of the laying of a definite charge as required by the Sixth Amendment. We think that this objection proceeds upon a misconstruction of the provision. Congress deliberately excluded the field where there are honest differences of opinion between schools and practitioners. Cong. Rec., 62d Cong., 2d Sess., Vol. 48, Part 12, App., p. 675. It was, plainly, to leave no doubt upon this point that the words "*false and fraudulent*" were used. This phrase must be taken with its accepted legal meaning, and thus it must be found that the statement contained in the package was put there to accompany the goods with actual intent to deceive—an intent which may be derived from the facts and circumstances, but which must be established. *Id.* 676. That false and fraudulent representations may be made with respect to the curative effect of substances is obvious. It is said that the owner has the right to give his views regarding the effect of his drugs. But state of mind is itself a fact, and may be a material fact, and false and fraudulent representations may be made about it; and persons who make or deal in substances, or compositions, alleged to be curative, are in a position to have superior knowledge and may be held to good faith in their statements. *Russell* v. *Clark's Executors*, 7 Cranch, 69, 92; *Durland* v. *United States*, 161 U. S. 306, 313; *Stebbins* v. *Eddy*, 4 Mason, 414, 423; *Kohler Mfg. Co.* v. *Becshore*, 59 Fed. 572, 574; *Missouri Drug Co.* v. *Wyman*, 129 Fed. 623, 628; *McDonald* v. *Smith*, 139 Mich. 211; *Hedin* v. *Minneapolis Medical Institute*, 62 Minn. 146, 149; *Hickey* v. *Morrell*, 102 N. Y. 454, 463; *Regina* v. *Giles*, 10 Cox, C. C. 44; *Smith* v. *Land & House Corporation*, L. R., 28 Ch. Div. 7, 15. It can not be said, for example, that one who should put inert matter or a worthless composition in the channels of trade, labeled or described in an accompanying circular as a cure for disease when he knows it is not, is beyond the reach of the law-making power. Congress recognized that there was a wide field in which assertions as to curative effect are in no sense honest expressions of opinion but constitute absolute falsehoods and in the nature of the case can be deemed to have been made only with fraudulent purpose. The amendment of 1912 applies to this field and we have no doubt of its validity.

With respect to the sufficiency of the averments of the libels, it is enough to say that these averments should receive a sensible construction. There must be a definite charge of the statutory offense, but we are not at liberty to indulge in hypercriticism in order to escape the plain import of the words used. There is no question as to the adequacy of the description of the article, or of the shipments, or of the packages. It is said that there was no proper statement of the contents of the circular. But the libels give the words of the circular and we think that the allegations were sufficient to show the manner in which they were used. The objection that it was not alleged that the statements in question appeared on the original package or on the bottles themselves, as already pointed out, is based on a misconception of the statutory provision. The remaining and most important criticism is that the libels did not sufficiently show that the statements were false and fraudulent. But it was alleged that they were false and fraudulent, and with respect to tuberculosis it was averred that the statement was that the article "has cured" and "will cure," whereas "in truth and in fact" it would "not cure," and that there was no "medicinal substance nor mixture of substances known at present" which could be relied upon to effect a cure. We think that this was enough to apprise those interested in the goods of the charge which they must meet. It was, in substance, a charge that, contrary to the statute, the article had been made the subject of interstate transportation with a statement contained in the package that the article had cured and would cure tuberculosis, and that this statement was contrary to the fact and was made with actual intent to deceive.

Judgments affirmed.

Mr. Justice McReynolds took no part in the consideration or decision of these cases.

CARL VROOMAN,
Acting Secretary of Agriculture.

4817. Adulteration and misbranding of gelatin pills, acetanilide tablets, acetphenetidin tablets, and caffeine tablets. U. S. v. Norwich Pharmacal Co., a corporation. Plea of guilty. Fine, $100 and costs. (F. & D. No. 5382. I. S. Nos. 20934–d, 20937–d, 20938–d, 20943–d.)

On March 10, 1915, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Norwich Pharmacal Co., a corporation, Chicago, Ill., alleging shipment by said company, in violation of the Food and Drugs Act, on April 24, 1912, from the State of Illinois into the State of Indiana, of quantities of gelatin pills, acetanilide tablets, acetphenetidin tablets, and caffeine tablets, which were adulterated and misbranded.

Analysis of a sample of the gelatin pills by the Bureau of Chemistry of this department showed the following results:

Morphine sulphate (grains per pill)	0.027
Quinine sulphate (grains per pill)	1.62

Adulteration of the article was alleged in the information for the reason that when it was so shipped as aforesaid the bottle containing it was labeled, marked, and branded as follows: "500 black gelatin pills—Coated—Neuralgic, N. F. (Dr. Gross). Each pill contains: Morphine Sulphate 1-20 gr. Quinine sulphate 2 grs. Acid Arsenous 1-20 gr. Ext-Aconite ½ gr. Strychnine 1-30 gr. Dose—one every 3 hours as required. 121104 Guaranteed by The Norwich Pharmacal Company Manufacturing Pharmacists, Norwich, New York. Under the Food and Drugs Act, June 30th, 1906. Serial No. 126 (trade mark)," and the said drug was sold under the following professed standard of strength, to wit, "Each pill contains: Morphine Sulphate 1-20 gr. Quinine sulphate 2 grs.," whereas, in truth and in fact, the standard of strength of the article fell below the professed standard of strength under which it was sold, in that it did not contain 1/20 grain morphine sulphate per pill and 2 grains quinine sulphate per pill, but contained a much less amount, to wit, 0.027 grain morphine sulphate per pill and 1.62 grains quinine sulphate per pill.

Misbranding of the article was alleged for the reason that said statement, to wit, "Each pill contains: Morphine Sulphate 1-20 gr. Quinine sulphate 2 grs.," was false and misleading in that it purported to state that the article contained 1/20 grain of morphine sulphate and 2 grains of quinine sulphate per pill, whereas, in truth and in fact, the article did not contain 1/20 grain of morphine sulphate and 2 grains of quinine sulphate per pill, but contained a much less amount, to wit, 0.027 grain of morphine sulphate per pill and 1.62 grains of quinine sulphate per pill.

Analyses of samples of the acetanilide tablets by the said Bureau of Chemistry showed the following results:

Caffeine, U. S. P. (grains per tablet)	0.42
Acetanilide (grains per tablet)	2.69
Shortage of caffeine (per cent)	16.0
Shortage of acetanilide (per cent)	23.0

Adulteration of this article was alleged for the reason that when it was so shipped as aforesaid, the bottle containing it was labeled, marked, and branded as follows, to wit: "500 Plain Compressed Tablet, Acetanilide Compound (Dr. Aulde) Each tablet contains: Acetanilide 3½ grs. Caffeine ½ gr. Sodium Bicarbonate 1 gr. Dose—one or two every 3 or 4 hrs. as indicated. 327–999–282—Guaranteed by the Norwich Pharmacal Company, 310—Manufacturing Pharmacists Norwich, New York, under the Food & Drugs Act, June 30th, 1906,

Serial No. 126," and the said drug product was sold under the following professed standard of strength, to wit, "Each tablet contains: Acetanilide 3½ grs. Caffeine ½ gr.," whereas, in truth and in fact, the standard of strength of the article fell below the professed standard of strength under which it was sold in that it did not contain 3½ grains of acetanilide per tablet and ½ grain of caffeine per tablet, but contained a much less amount, to wit, 2.69 grains of acetanilide per tablet and 0.42 grain of caffeine per tablet.

Misbranding of the article was alleged for the reason that said statement, to wit, "Each tablet contains: Acetanilide 3½ grs. Caffeine ½ gr.," was false and misleading in that said statement purported to state that the article contained 3½ grains of acetanilide and ½ grain of caffeine per tablet, whereas, in truth and in fact, it did not contain 3½ grains of acetanilide per tablet and ½ grain of caffeine per tablet, but contained a much less amount, to wit, 2.69 grains of acetanilide per tablet and 0.42 grain of caffeine per tablet.

Analysis of a sample of the acetphenetidin tablets by said Bureau of Chemistry showed the following results:

Acetphenetidin (grains per tablet)	1.55
Shortage (average per cent)	22.5

Adulteration of this article was alleged for the reason that when it was so shipped as aforesaid, the bottle containing it was labeled, marked, and branded as follows, to wit: "500 Plain Compressed Tablets Acetphenetidin Each tablet represents: 2 Grs. 962 31510 Guaranty No. 126 Guaranteed under the Food and Drugs Act, June 30th, 1906. The Norwich Pharmacal Company Manufacturing Pharmacists Norwich, New York 605," and the said drug product was sold under the following professed standard of strength, to wit, "Tablets Acetphenetidin Each tablet represents: 2 Grs.," whereas, in truth and in fact, the standard of strength of the drug product fell below the professed standard of strength under which it was sold in that it did not contain 2 grains of acetphenetidin per tablet, but contained a much less amount, to wit, 1.55 grains of acetphenetidin per tablet.

Misbranding of the article was alleged for the reason that said statement, to wit, "Tablets Acetphenetidin Each tablet represents: 2 Grs.," was false and misleading in that said statement purported to state that the article contained 2 grains of acetphenetidin per tablet, whereas, in truth and in fact, it did not contain 2 grains of acetphenetidin per tablet, but did contain a much less amount, to wit, 1.55 grains of acetphenetidin per tablet.

Analysis of a sample of the caffeine tablets by said Bureau of Chemistry showed the following results:

Caffeine (grains per tablet)	0.827
Shortage of caffeine (per cent)	17.3

Adulteration of this article was alleged for the reason that when it was so shipped as aforesaid the bottle containing it was labeled, marked, and branded as follows, to wit: "1000 Plain Tablet Triturates Caffeine Alkaloid. Each tablet represents: 1 Gr. 208 124124 Guaranty No. 126 Guaranteed under the Food and Drugs Act June 30th 1906. The Norwich Pharmacal Company Manufacturing Pharmacists Norwich, New York. (trade mark)" and the said drug product was sold under the following professed standard of strength, to wit: "Tablets Triturates Caffeine Alkaloid Each tablet represents: 1 Gr.", whereas, in truth and in fact, the standard of strength of the drug product fell below the professed standard of strength under which it was sold, in that it did not contain 1 grain of caffeine per tablet, but contained a much less amount, to wit, 0.827 grain of caffeine per tablet.

Misbranding was alleged for the reason that said statement, to wit, "Tablet Triturates Caffeine Alkaloid Each tablet represents: 1 Gr.", was false and misleading in that said statement purported to state that the article contained 1 grain of caffeine alkaloid per tablet, whereas, in truth and in fact, it did not contain 1 grain of caffeine alkaloid per tablet, but contained a much less amount, to wit, 0.827-grain of caffeine alkaloid per tablet.

On June 22, 1915, the defendant company entered a plea of guilty to the information, and on June 30, 1915, the court imposed a fine of $100 and costs.

CARL VROOMAN,
Acting Secretary of Agriculture.

4818. Adulteration of oats. U. S. v. Marshall, Hall & Waggoner Grain Co., a corporation. Plea of guilty. Fine, $30 and costs. (F. & D. No. 5389. I. S. Nos. 14775–k, 15243–k, 15533–k.)

On April 25, 1916, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against The Marshall, Hall & Waggoner Grain Co., a corporation, St. Louis, Mo., alleging shipment by said company, in violation of the Food and Drugs Act, on June 28, 1915, of 2 separate carload shipments of oats from the State of Missouri into the State of Virginia, and, on June 29, 1915, of another carload of oats from the State of Missouri into the State of Ohio, all of which was adulterated.

Analysis of a sample from one of the carloads shipped June 28, 1915, made by the Bureau of Chemistry of this department showed the following results:

Moisture (per cent)---------- 14.1
Sulphur dioxid: Present.

Analysis of a sample from the other carload shipped on this date showed the following results:

Moisture (per cent)---------- 13.6
Sulphur dioxid: Present.

Analysis of a sample from the carload shipped June 29, 1915, showed the following results:

Moisture (per cent)---------- 13.8
Sulphur dioxid: Present.

The results of all three analyses showed that the product contained an excessive amount of water and had been bleached.

Adulteration of all 3 carloads of oats was alleged in the information for the reason that a certain substance, to wit, water, had been mixed and packed with the article so as to reduce, lower, and injuriously affect its quality and strength.

On May 1, 1916, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $30 and costs.

CARL VROOMAN,
Acting Secretary of Agriculture.

4819. Misbranding of sirup. U. S. v. Merwin E. Leslie, trading as Leslie, Dunham & Co. Plea of guilty. Fine, $20. (F. & D. No. 5390. I. S. No. 25609–h.)

On May 6, 1916, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Merwin E. Leslie, trading as Leslie, Dunham & Co., Newark, N. J., alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about July 15, 1914, from the State of New Jersey into the State of Maryland, of a quantity of sirup which was misbranded. The article was labeled: (Label from shipping package) "Rock Maple Brand Maple Syrup from Leslie Dunham & Co., Newark, N. J." (Label on can) "Leslie's Syrup Copyright 1905." (Representation of winter scene, houses, lake, and rock, man with team of oxen, another man with two pails.) "Rock Maple Brand Made From Pure Rock Maple Sap & Rock Candy Syrup. Leslie, Dunham & Co. Guaranteed by the packers under the Food & Drugs Act, June 30, 1906. Serial No. 9583."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Total solids (per cent)	67.1
Total ash (per cent)	0.146
Insoluble ash (per cent)	0.080
Soluble ash (per cent)	0.066
Alkalinity of insoluble ash (cc N/10 acid per 100 grams)	19.0
Alkalinity of soluble ash (cc N/10 acid per 100 grams)	8.7
Basic lead number	0.22
Malic acid value	0.089
Reducing sugars before inversion (per cent)	3.29
Polarizations:	
21° C. before inversion (°V.)	62.2
21° after inversion (°V.)	—22.0
87° C. after inversion (°V.)	— 0.6
Sucrose (Clerget) (per cent)	63.4

Production consisted of about 25 per cent maple and 75 per cent sugar sirup.

Misbranding of the article was alleged in the information for the reason that the following statement regarding it and the ingredients and substances contained therein appearing on the shipping package aforesaid, to wit, "Rock Maple Brand Maple Syrup," was false and misleading in that it indicated to purchasers thereof that the article consisted wholly of maple sirup; and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it consisted wholly of maple sirup when, in truth and in fact, it did not, but did consist of, to wit, a mixture of approximately 75 per cent of sugar sirup and 25 per cent of maple sirup. Misbranding was alleged for the further reason that the following statement regarding the article and the ingredients and substances contained therein, appearing on the label of the can aforesaid, to wit, "Rock Maple Brand," not corrected by the additional statement on the said label in inconspicuous type, to wit, "Made From Pure Rock Maple Sap & Rock Candy Syrup," was false and misleading in that it indicated to purchasers thereof that the article consisted largely, if not entirely, of rock maple sirup; and for the further reason that the can was labeled as aforesaid so as to deceive and mislead purchasers thereof into the belief that it consisted largely, if not entirely, of maple sirup, when, in truth

and in fact, it did not consist largely or entirely of rock maple sirup or maple sirup, but did consist of, to wit, a mixture of approximately 75 per cent of sugar sirup and 25 per cent of maple sirup. Misbranding was alleged for the further reason that the article consisted of, to wit, a mixture of 75 per cent of sugar sirup and 25 per cent of maple sirup, and was offered for sale under the distinctive name of another article, to wit, maple sirup.

On May 9, 1916, the defendant entered a plea of guilty to the information, and the court imposed a fine of $20.

CARL VROOMAN,
Acting Secretary of Agriculture.

4820. Adulteration of coffee. U. S. v. 3 Cases of Coffee. Default decree of condemnation and forfeiture. Product ordered sold. (F. & D. No. 5457. I. S. No. 3024–h, 6264–h. S. No. 2030.)

On December 3, 1913, the United States attorney for the District of Idaho, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 3 cases, each containing 120 one-pound packages, of coffee, remaining unsold in the original unbroken packages at Sand Point, Idaho, alleging that the article was shipped, on or about November 14, 1913, by Hills Bros., San Francisco, Cal., and transported from the State of California into the State of Idaho, and charging adulteration in violation of the Food and Drugs Act. The cases were labeled: "120 1-lb. papers Roast Mexomoka—Reg. U. S. Pat. Office, Hills Bros., San Francisco, California." The retail packages were labeled: "One pound Hills Bros. Mexomoka Coffee, San Francisco."

It was alleged in the libel that the coffee was adulterated and below the professed standard in strength and purity and quality under which it was sold, in that the labels on the goods indicated that the product was composed of a mixture of Mexican and Mocha coffees, but, in truth and in fact, it was a blend of two parts of Acid Bourbon Santos and one part Mexican coffee, and there was no part of Mocha coffee present in said product. It was further alleged that the article was below the professed standard in strength and purity and was not of the quality under which it was proposed to be sold and was a mixed substance [and a substance had been mixed] and packed with it so as to reduce and lower and injuriously affect its quality and strength.

On October 28, 1915, no claimant having appeared for the property, a decree pro confesso was entered in favor of the United States, and it was ordered by the court that the product should be sold by the United States marshal.

CARL VROOMAN,
Acting Secretary of Agriculture.

4821. Misbranding of cottonseed meal. U. S. v. William F. Rapier et al. (Rapier Sugar Feed Co.). Plea of guilty. Fine, $25. (F. & D. No. 5518. I. S. No. 13518-k.)

On February 25, 1916, the United States attorney for the Western District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against William F. Rapier and James L. Rapier, trading as Rapier Sugar Feed Co., Owensboro, Ky., alleging shipment by said defendants, in violation of the Food and Drugs Act, on or about February 1, 1915, from the State of Kentucky into the State of Indiana, of a quantity of cottonseed meal which was misbranded. The article was labeled: "$50 fine for using this tag second time. No. 6278. Net Weight 100 Pounds. Rapier Sugar Feed Company, of Owensboro, Ky., Guarantees this Rapier's Brand Choice Grade Cottonseed Meal to contain not less than 7.5 per cent of crude fat, 41.0 per cent of crude protein, not more than 10.0 per cent of crude fiber, and to be compounded from the following ingredients: Decorticated Cottonseed.—W. J. Jones, jr., State Chemist. Purdue University Agricultural Experiment Station, La Fayette, Ind. Not good for more than 100 Pounds."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Moisture (per cent)	8.89
Crude protein (per cent)	38.19
Crude fiber (per cent)	14.90
Crude fat (per cent)	6.48

Misbranding of the article was alleged in the information for the reason that the following statement regarding it and the ingredients and substances contained therein, appearing in the label aforesaid, to wit: "Rapier Sugar Feed Company, of Owensboro, Ky., Guarantees this Rapier's Brand Choice Grade Cottonseed Meal to contain not less than 7.5 per cent of crude fat, 41.0 per cent of crude protein, not more than 10.0 per cent of crude fiber," was false and misleading in that it indicated to purchasers thereof that the article contained at least 7.5 per cent of crude fat, 41 per cent of crude protein, and not more than 10 per cent of crude fiber, and for the further reason that the article was labeled as aforesaid, so as to deceive and mislead purchasers into the belief that it contained at least 7.5 per cent of crude fat, 41 per cent of crude protein, and not more than 10 per cent of crude fiber, when, in truth and in fact, it did not contain 7.5 per cent of crude fat, 41 per cent of crude protein, and did contain more than 10 per cent of crude fiber.

On May 1, 1916, a plea of guilty was entered on behalf of the defendants, and the court imposed a fine of $25.

CARL VROOMAN,
Acting Secretary of Agriculture.

4822. Alleged adulteration and misbranding of apples. U. S. v. John Johnson, trading as J. Johnson & Co. Tried to the court and a jury. Verdict of not guilty by direction of the court. (F. & D. No. 5533. I. S. No. 5496–h.)

On March 9, 1916, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the district court of the United States for said district an information against John Johnson, trading as J. Johnson & Co., St. Louis, Mo., alleging the unlawful receipt in interstate commerce by said defendant, on or about September 27, 1913, of a quantity of apples shipped from the State of Illinois into the State of Missouri, and for the unlawful sale and delivery of the article by said defendant in original unbroken packages to a purchaser in the city of St. Louis, Mo.

The article was labeled: "55 23 Wine Sap 4981." Examination of a sample of the article by the Bureau of Chemistry of this department showed that the contents of one barrel were divided into three grades, according to size, and designated "small," "medium," and "large." The "small" apples numbered 914, which averaged 30 apples to the pound, and were unfit for any edible purpose. The "medium" apples numbered 1,158 and averaged 15 apples to the pound and were too small for edible purposes. The "large" apples numbered 312 and averaged 9 apples to the pound. The large apples would not grade as No. 2. The apples were not Winesap apples.

Examination of a sample by the Bureau of Plant Industry of this department showed "that it was York Imperial instead of Winesap, and that none of the apples would grade No. 2 in commercial size. The largest of these apples would rank as culls in size, but the smallest of them were too small and too poor to rank even as culls. It required 21 of the smallest apples to weigh ½ pound."

Adulteration of the article was alleged in the information for the reason that the apples were of inferior quality and that they were, to wit, a mixture of cull apples, apples without any merchantable value whatever, and a small percentage of merchantable apples, and said merchantable apples had been mixed with the culls and apples without [any] merchantable value whatever in a manner whereby such inferiority was concealed. Misbranding was alleged for the reason that the following statement regarding the article, appearing on the label aforesaid, to wit, "Wine Sap," was false and misleading in that it indicated to purchasers thereof that the article consisted of merchantable apples of the Winesap variety, and for the further reason that the article was labeled "Wine Sap" so as to deceive and mislead purchasers into the belief that the article consisted of merchantable apples of the Winesap variety, when, in truth and in fact, it did not, but did consist of, to wit, a mixture of cull apples, apples without any merchantable value whatever, and a small percentage of merchantable apples, all of which were of the York Imperial variety.

On May 17, 1916, the case having come on for trial before the court and a jury, after the submission of evidence, a verdict of not guilty was returned by the jury by direction of the court.

CARL VROOMAN,
Acting Secretary of Agriculture.

4823. Alleged adulteration and misbranding of sprouts. U. S. v. Northwestern Malt & Grain Co., a corporation. Tried to the court and a jury. Verdict of acquittal by direction of court. (F. & D. No. 5582. I. S. Nos. 388–e, 389–e, 390–e, 8941–e, 8942–e, 8943–e, 8944–e.)

On June 14, 1915, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Northwestern Malt & Grain Co., a corporation, Chicago, Ill., alleging shipment by said company, in violation of the Food and Drugs Act, on or about March 12, 1913, March 11, 1913 (three separate shipments), March 17, 1913 (two shipments), and March 14, 1913, from the State of Illinois into the State of Indiana, of quantities of sprouts which were charged to have been adulterated and misbranded.

The article in each shipment was invoiced and sold as "sprouts."

Examination of samples of the product in each shipment, made by the Bureau of Chemistry of this department, showed the following results:

Sample 1:

Sprouts (per cent)	60.0
Barley and malt (per cent)	21.6
Weed seeds (per cent)	4.3
Chaff (per cent)	5.8
Chaff, barley, and fine malt (per cent)	4.5
Chaff and fine material (per cent)	3.6
	99.8

The sample contains not more than 65 per cent of malt sprouts.

Sample 2:

Sprouts (per cent)	80.2
Barley and malt (per cent)	5.6
Weed seeds (per cent)	1.7
Chaff (per cent)	4.9
Chaff, barley, and fine malt (per cent)	3.0
Chaff and cracked barley (per cent)	4.3
	99.7

The sample contains not more than 85 per cent of malt sprouts.

Sample 3:

Sprouts (per cent)	59.48
Barley and malt (per cent)	18.14
Weed seeds (per cent)	7.18
Chaff (per cent)	5.89
Chaff, etc. (per cent)	9.29
	99.98

The sample contains not more than 65 per cent of malt sprouts.

Sample 4:

Malt sprouts (per cent)	74.9
Chaff and broken barley (per cent)	14.97
Barley and malt (per cent)	5.09
Chaff (per cent)	3.01
Weed seeds, including oats (per cent)	2.00
	99.97

The sample contains not more than 80 per cent of malt sprouts.

Sample 5:

Malt sprouts (per cent)	68.8
Chaff and broken barley (per cent)	15.04
Barley and malt (per cent)	9.2
Chaff (per cent)	4.41
Weed seeds (including oats) (per cent)	2.54
	99.99

The sample contains not more than 75 per cent of malt sprouts.

Adulteration of the article in each shipment was alleged in the information for the reason that substances other than sprouts or malt sprouts, namely, barley, malt, chaff, weed seeds, and divers other substances, had been substituted in part for sprouts or malt sprouts which the article purported to be, and for the further reason that substances other than sprouts or malt sprouts, namely, barley, malt, chaff and weed seeds, had been mixed and packed with the article, so as to reduce, lower, and injuriously affect its quality and strength.

Misbranding of the article in each shipment was alleged for the reason that it was offered for sale and sold under the distinctive name of another article, that is to say, said article was invoiced and sold as "sprouts" (meaning thereby malt sprouts), whereas, in truth and in fact, it was not composed entirely of sprouts or malt sprouts, but was a mixture composed of malt sprouts, barley, malt, chaff, weed seeds, and divers other substances, containing only approximately 65 per cent (or 85, 65, 80, or 75 per cent, as the case might be in the different shipments) of malt sprouts.

On February 23, 1916, the case having come on for trial before the court and a jury, after the submission of evidence and arguments by counsel, the jury returned a verdict of not guilty by direction of the court.

CARL VROOMAN,
Acting Secretary of Agriculture.

4824. Adulteration and misbranding of wine. U. S. v. Kelleys Island Wine Co., a corporation. Plea of guilty. Fine, $25 and costs. (F. & D. No. 5702. I. S. Nos. 2549–e, 4761–e.)

On December 19, 1914, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Kelleys Island Wine Co., a corporation, Kelleys Island, Ohio, alleging shipment by said company, in violation of the Food and Drugs Act, on or about October 12, 1912, and January 30, 1913, from the State of Ohio into the State of Pennsylvania, of two different shipments of wine which, in each case, was adulterated and misbranded. The article in the first shipment was labeled: (On barrel) "Ohio Port Wine Kelleys Island Wine Co. Kelleys Island, Ohio Guaranteed under National Pure Food & Drugs Act June 30 1906."

Analysis of a sample of this article by the Bureau of Chemistry of this department showed the following results, expressed in grams per 100 c. c. unless otherwise indicated:

Alcohol (per cent by volume)	11.60
Nonsugar solids	3.25
Reducing sugars as invert	16.01
Sucrose by copper	0.86
Polarization invert at 87° C. undiluted (°V.)	+10.4
Ash	0.297
Acid as tartaric	0.626
Volatile acid as acetic	0.194
Total tartaric acid	0.180
Free tartaric acid	None.
Cream of tartar	0.225
Tartaric acid to alkaline earths	None.
Chlorin	0.072

This product is an imitation of a port wine consisting in part or whole of a pomace wine made from grape pomace and cornstarch sugar.

The article in the second shipment was labeled: (One end of barrel) "52 A P. Parker Brown Co. Allegheny, Pa." (Other end) "52 K A Ohio Port Wine Kellys Island Wine Co. Kellys Island, Ohio Guaranteed under National Pure Food & Drugs Act, June 30, 1906."

Analysis of a sample of this article by said Bureau of Chemistry showed the following results, expressed in grams per 100 c. c., unless otherwise indicated:

Alcohol (per cent by volume)	12.65
Nonsugar solids	3.20
Reducing sugars as invert	20.77
Sucrose by copper	1.07
Polarization invert at 87° C. undiluted (°V.)	+26.4
Ash	0.408
Acid as tartaric	0.469
Volatile acid as acetic	0.110
Total tartaric acid	0.177
Free tartaric acid	None.
Cream of tartar	0.222
Tartaric acid to alkaline earths	None.
Chlorin	0.139

Adulteration of the article in each shipment was alleged in the information for the reason that another substance, to wit, base wine prepared from pomace and starch sugar, had been substituted in part for Ohio port wine, which the article purported to be.

Misbranding of the article in each shipment was alleged for the reason that the statement "Ohio Port Wine," borne on the barrels containing the article, was false and misleading, in that it purported and represented the article to be a wine of port type produced in Ohio, and for the further reason that the article was labeled and branded "Ohio Port Wine," so as to mislead and deceive the purchaser into the belief that it was a wine of port type produced in Ohio, whereas, in truth and in fact, it was not, but was a base wine prepared from pomace and starch sugar.

On April 17, 1916, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $25 and costs.

CARL VROOMAN,
Acting Secretary of Agriculture.

4825. Adulteration and misbranding of nutmegs. U. S. v. Wixon Spice Co., a corporation. Plea of guilty. Fine, $100 and costs. (F. & D. No. 5715. I. S. No. 6740–e.)

On June 11, 1915, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Wixon Spice Co., a corporation, Chicago, Ill., alleging shipment by said company, in violation of the Food and Drugs Act, on or about February 17, 1913, from the State of Illinois into the State of Kansas, of a quantity of nutmegs which were adulterated and misbranded. The article was labeled: "50 lbs. Net Weight Strictly Pure Nutmegs."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Nonvolatile ether extract (per cent)	25.52
Ash (per cent)	4.47
Ash insoluble in 10 per cent HCl (per cent)	0.16
Crude fiber (per cent)	16.97

The article had a very weak nutmeg taste and contained a large amount of nutmeg shells.

Adulteration of the article was alleged in the information for the reason that another substance, to wit, nutmeg shells, had been mixed and packed therewith so as to reduce and lower and injuriously affect its quality and strength, and had been substituted in part for strictly pure nutmegs which the article purported to be.

Misbranding was alleged for the reason that the statement "Strictly Pure Nutmegs," borne on the label of the article, was false and misleading, in that it purported and represented the article to consist exclusively of nutmegs, and for the further reason that the statement, to wit, "Strictly Pure Nutmegs," borne on the label, was calculated to deceive and mislead the purchaser into the belief that it consisted exclusively of nutmegs, whereas, in truth and in fact, it did not, but did consist of a mixture of nutmeg shells and nutmegs.

On February 18, 1916, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $100 and costs.

CARL VROOMAN,
Acting Secretary of Agriculture.

4826. Adulteration and misbranding of Jack Johnson Made Wine. U. S. v. Elias Goldstein and Aaron Goldstein, copartners (The Two Brothers Wine & Liquor Co.). Plea of guilty. Fine, $25. (F. & D. No. 5716. I. S. Nos. 2941–h, 2942–h, 2956–h.)

On December 29, 1915, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Elias Goldstein and Aaron Goldstein, copartners, trading as The Two Brothers Wine & Liquor Co., East Newark, N. J., alleging shipment by said defendants, in violation of the Food and Drugs Act, on or about September 16, 1913, October 1, 1913, and October 13, 1913, from the State of New Jersey into the State of Louisiana, of quantities of an article labeled "Jack Johnson Made Wine. Preserved with one-tenth of one per cent benzoate of soda," which was adulterated and misbranded.

Analyses of samples of the article by the Bureau of Chemistry of this department showed the following results:

	Shipped Sept. 13, 1913.	Shipped Oct. 1, 1913.	Shipped Oct. 13, 1913.
Specific gravity at 20°/15.6° C	1.025	1.029	
Alcohol (per cent by volume)	8.9	7.7	8.3
Solids (grams per 100 cc)	9.51	10.13	10.88
Polarization:			
Direct, at 28° C., 22° C	+ 8.0	−4.2 (at 22°)	−8.3
Invert, at 22° C. (°V.)	+ 8.0	−4.4 (at 22°)	−8.4
Invert, at 87° C. (°V.)	+12.0	+2.0	+1.0
Ash (grams per 100 cc)	0.47	0.38	0.38
Alkalinity total ash (cc N/10 acid per 100 cc)	36.8	26.4	32.8
Acid, as acetic (grams per 100 cc)	0.68	0.85	0.78
Volatile acid, as acetic (grams per 100 cc)	0.33	0.51	0.48
Nonvolatile acid, as tartaric (grams per 100 cc)	0.37	0.34	
Color:	Coal tar resembles Orchil.	Resembles Orchil.	Resembles Orchil with caramel.
Tartaric acid (grams per 100 cc)	0.336	0.33	0.31
Glycerol (grams per 100 cc)			0.30
Fixed acid (grams per 100 cc)			0.33

These results, with the taste and odor, indicate that a fermented solution of sugar colored in imitation of wine has been substituted in whole or in part for the article. Commercial glucose has been used in this product in part as a substitution for the natural fruit sugar.

Adulteration of the wine in each of the shipments was alleged in the information for the reason that an imitation wine had been mixed and packed with the article, so as to reduce, lower, and injuriously affect its quality and strength, and had been substituted in part for wine, which the article purported to be. Adulteration was alleged for the further reason that the article was colored in a manner whereby its inferiority was concealed.

Misbranding of the article was alleged for the reason that the statement, to wit, "wine," borne on the label attached to the barrels containing the article, was false and misleading in that it purported and represented the article to be wine, and, further, in that the article was labeled "wine" so as to deceive and mislead the purchaser into the belief that it was wine, whereas in truth and in fact, it was not wine, but was an imitation wine artificially colored. Misbranding was alleged for the further reason that the article was offered for sale and sold under the distinctive name of another article, to wit, wine, whereas, in truth and in fact, it was not wine, but was an imitation wine, artificially colored.

On March 27, 1916, a plea of guilty was entered on behalf of the defendant firm, and the court imposed a fine of $25.

CARL VROOMAN,
Acting Secretary of Agriculture.

4827. Misbranding of sirup. U. S. v. The Union Starch and Refining Co., a corporation. Plea of guilty. Fine, $200. (F. & D. No. 5717. I. S. No. 16247-k.)

On May 12, 1916, the grand jurors of the United States, within and for the District of Indiana, acting upon a report by the Secretary of Agriculture, upon presentment by the United States attorney for the said district, returned an indictment in the District Court of the United States for the district aforesaid against the Union Starch & Refining Co., a corporation, Edinburg, Ind., charging shipment by said company, in violation of the Food and Drugs Act, on May 20, 1915, from the State of Indiana into the State of Ohio, of a quantity of sirup which was misbranded. The article was labeled: "Net Weight 1 Lb. 8 oz. Monarch Brand Corn and Sugar Syrup Manufactured by Union Starch & Refining Co. Edinburg, Ind. Compound: 70% Corn Syrup; 30% Granulated Sugar Syrup Imitation Maple Flavor Caramel Color Guaranteed by Union Starch and Refining Co., Edinburg, Ind., under the Food and Drugs Act June 30, 1906. Serial No. 5854."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Polarization:	
Direct at 29° C. (° V.)	+152.2
Invert at 29° C. (° V.)	+140.0
Invert at 87° C. (° V.)	+138.0
Reducing sugars as invert before inversion (per cent)	30.92
Reducing sugars as invert after inversion (per cent)	40.84
Sucrose by Clerget (per cent)	9.52
Sucrose by copper (per cent)	9.42
Commercial glucose (factor 163) (per cent)	84.66

Contains more corn sirup and less granulated sugar sirup than is declared on the label.

Misbranding of the article was charged in the indictment for the reason that the statement, to wit, "70% corn syrup, 30% granulated sugar syrup," borne on the labels attached to the cans containing the article, was false and misleading, in that it represented that the article contained not more than 70 per cent of corn sirup and not less than 30 per cent of granulated sugar sirup; and for the further reason that the article was labeled "70% corn syrup; 30% granulated sugar syrup," so as to deceive and mislead the purchaser thereof into the belief that it contained not more than 70 per cent of corn sirup and not less than 30 per cent of granulated sugar sirup, whereas, in truth and in fact, it contained more than 70 per cent of corn sirup and contained less than 30 per cent of granulated sugar sirup, as aforesaid.

On May 19, 1916, the defendant company entered a plea of guilty to the indictment, and the court imposed a fine of $200 and costs.

CARL VROOMAN,
Acting Secretary of Agriculture.

4828. Misbranding of Dr. Thacher's Liver & Blood Syrup. U. S. v. Thacher Medicine Co., a corporation. Submitted to information. Fine, $75 and costs. (F. & D. No. 5810. I. S. No. 9637–c.)

On December 10, 1914, the United States attorney for the Eastern District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Thacher Medicine Co., a corporation, Chattanooga, Tenn., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about January 27, 1913, from the State of Tennessee into the State of Maryland, of a quantity of Dr. Thacher's Liver & Blood Syrup which was misbranded. The article was labeled: (On carton) "This Style Package adopted 1907. Dr. Thacher's Liver & Blood Syrup 12½% Alcohol A Powerful Tonic A Pure Liver Regulator and Blood Purifier. 905 Guaranteed by Thacher Medicine Co. Under the Food and Drugs Act, June 30, 1906. A Medicine that can be Taken by all Young and Old Male and Female Read the enclosed circular Follow the Directions Carefully Price 50 Cents Prepared for Thacher Medicine Co. Chattanooga, Tenn. (On side of carton) Dr. Thacher's Liver and Blood Syrup for Liver Complaints, Biliousness, Costiveness, Drowsiness, Yellow Jaundice, and Kidney Complaints. Impure or Bad Blood Including Scrofula, Salt Rheum, Erysipelas, Pimples, and all Diseases of a Syphilitic character also Loss of Appetite, Dyspepsia, Sour Stomach, Sleeplessness, Pains in Back and Sides, Sick Headache, and in cases of Female Diseases The Syrup has given Immediate Relief. Notice: The great success and unprecedented demand and sale of Dr. Thacher's Liver and Blood Syrup have induced several unscrupulous and piratical parties to attempt to manufacture a similar preparation, but without any success. Imitators have completely failed to prepare a medicine that can be Relied Upon to Cure the diseases named, or in any way equal the true merits of Dr. Thacher's Liver and Blood Syrup. To guard against fraud, see that our Trade Mark is on each package, and that it bears the signature of Doctor H. S. Thacher." (On bottle) "Dr. Thacher's Liver & Blood Syrup 12½% Alcohol Prepared for Thacher Medicine Co. Chattanooga, Tenn. For Liver Complaint, Biliousness, Constipation, Jaundice, Malaria, Chills and Fever, Indigestion, Loss of Appetite, Kidney Troubles, Rheumatism, Catarrh, Blood and Skin Diseases, and Female Diseases. Guaranteed by Thacher Med. Co. under Food and Drugs Act, June 30, 1906. 905 Directions: One or two teaspoonfuls in water after meals increase or decrease the dose as needed to move the bowels freely once a day. Children in proportion to age and constitution. Price 50 Cents. Read the circular carefully that is wrapped around the bottle. (Blown in bottle) Dr. Thacher's Liver and Blood Syrup, Chattanooga, Tenn."

The circular accompanying the article contained, among other things, the following: "As a blood purifier it is without an equal, is pleasant to take and may be used by young or old. In cases of impure blood it gives speedy relief, curing Scrofula, Salt Rheum, Eczema, Boils, Pimples, Erysipelas, and Syphilitic Diseases. It will cure all diseases caused by the failure of the Liver, Kidneys, Stomach or Bowels to perform their proper functions. As a blood purifier no medicine can be more effective. The impurities will be removed and the entire system cleansed. As a preventive of bilious and yellow fever it is known to be effectual."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the product to be a sirup containing alcohol and extractive matter from vegetable drugs including one or more cathartic drugs flavored with spices.

Misbranding of the article was alleged in the information for the reason that the following statements regarding the therapeutic or curative effects thereof, appearing on the label aforesaid, to wit, "Dr. Thacher's Liver and Blood Syrup for Liver Complaints, Biliousness, Costiveness, Drowsiness, Yellow Jaundice, and Kidney Complaints. Impure or Bad Blood, including Scrofula, Salt Rheum, Erysipelas, Pimples, and all diseases of a Syphilitic character, also loss of Appetite, Dyspepsia, Sour Stomach, Sleeplessness, Pains in the Back and Sides, Sick Headache and in cases of Female Diseases the Syrup has given immediate relief," and included in the circular aforesaid, to wit: "In cases of impure blood it gives speedy relief, curing Scrofula, Salt Rheum, Eczema, Boils, Pimples, Erysipelas, and Syphilitic diseases." "It will cure all diseases caused by the failure of the liver, kidneys, stomach or bowels to perform their proper functions." "As a blood purifier no medicine can be more effective. The impurities will be removed and the system cleansed. As a preventive of bilious and yellow fever it is known to be effective," were false and fraudulent in that the same were applied to the article knowingly, and in reckless and wanton disregard of their truth or falsity, so as to represent falsely and fraudulently to purchasers thereof, and create in the minds of purchasers thereof the impression and belief that it was, in whole or in part, composed of, or contained, ingredients or medicinal agents effective, among other things, for curing scrofula, salt rheum, erysipelas, and all diseases of a syphilitic character, and syphilitic diseases, and for the immediate relief of female diseases, and for curing eczema and diseases caused by the failure of the liver, kidneys, stomach, or bowels to perform their proper functions, and as a preventive of yellow fever, when, in truth and in fact, it was not in whole or in part composed of, and did not contain, such ingredients or medicinal agents.

On November 29, 1915, the defendant company entered its submission to the information, and the court imposed a fine of $75 and costs.

CARL VROOMAN,
Acting Secretary of Agriculture.

4829. Adulteration of dried apples. U. S. v. Davidson Bros., a corporation. Tried to the court and a jury. Verdict of guilty. Fine, $100 and costs. (F. & D. No. 5847. I. S. No. 919–h.)

On June 19, 1915, the United States attorney for the Western District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Davidson Bros., a corporation, Glasgow, Ky., alleging shipment by said company, in violation of the Food and Drugs Act, on or about July 22, 1913, from the State of Kentucky into the State of Ohio, of a quantity of dried apples which were adulterated.

Examination of a sample of the product by the Bureau of Chemistry of this department showed that it was partially fermented and contained an excessive amount of worms, and worm-eaten pieces, weevils, and excreta. It also contained an excessive amount of dirty material.

Adulteration of the article was alleged in the information for the reason that it consisted, in whole or in part, of a filthy and decomposed vegetable substance.

On May 16, 1916, the case having come on for trial before the court and a jury, after the submission of evidence and arguments by counsel, the case was given to the jury which, after due deliberation, returned its verdict of guilty, and the court thereupon imposed a fine of $100 and costs.

CARL VROOMAN,
Acting Secretary of Agriculture.

4830. Misbranding of vodka. U. S. v. 10 Cases of alleged Russian Vodka. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 5926. I. S. No. 11504-l. S. No. C-335.)

On September 28, 1915, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 10 cases, containing 200 bottles of vodka, remaining unsold in the original unbroken packages at Chicago, Ill., alleging that the article had been shipped on July 30, 1915, by the Russian Monopol Co. (Inc.), Brooklyn, N. Y., and transported from the State of New York into the State of Illinois, and charging misbranding in violation of the Food and Drugs Act.

Misbranding of the article was alleged in the libel for the reason that each of the bottles bore a label containing certain words and figures in the Russian language, and, in addition, the words and figures as follows, to wit, "Monopol Vodka made and bottled in Russia," which said statement upon the labels was false and misleading, in that the labels purported to state that the article of food was a foreign product, manufactured in Russia, whereas, in truth and in fact, it was not manufactured in Russia, but was manufactured in the city of Brooklyn, in the State of New York, in the United States of America. Misbranding was alleged for the further reason that the said statement deceived and misled the purchaser into the belief that the article was a genuine vodka, bottled and manufactured in Russia, whereas, in truth and in fact, it was manufactured in the city of Brooklyn, in the State of New York, in the United States of America. Misbranding was alleged for the further reason that said statement was false and misleading in that it purported to state that the article was a foreign product, manufactured in Russia, whereas, in truth and in fact, it was not, but was manufactured in the city of Brooklyn, in the State of New York, in the United States of America, and was an imitation of the liquor or beverage known as vodka, and was offered for sale under the distinctive name of another article, to wit, the article of food, liquor, or beverage known as vodka.

On March 21, 1916, the default of all parties having been noted, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN,
Acting Secretary of Agriculture.

4831. Misbranding of Henry's Red Gum Compound. U. S. * * * v. Henry L. McNulty. Plea of guilty. Fine, $25. (F. & D. No. 5942. I. S. No. 8841–e.)

On September 21, 1915, the United States attorney for the Northern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Henry L. McNulty, Norwood, N. Y., alleging shipment by said defendant in violation of the Food and Drugs Act, as amended, on or about February 3, 1913, from the State of New York into the State of Vermont, of a quantity of Henry's Red Gum Compound which was misbranded. The article was labeled: (On carton) "Henry's Red Gum Compound The Great Cough and Cold Remedy Best for all Affections of the Throat and Lungs Prevents Pneumonia and Breaks up La Grippe Pleasant to Take Good for Both Old and Young Every Bottle Guaranteed Price 25 cents Manufactured only by H. L. McNulty Norwood, N. Y." (Same statement on back of carton.) (On sides of carton) "What Druggists and others say of Henry's Red Gum. Marion, N. Y., Sept. 25, 1902. H. L. McNulty, Norwood, N. Y.—Dear Sir: You may send us one gross of Henry's Red Gum. We sell more Red Gum than all other kinds of Cough Remedies combined. Yours Respectfully, J. B. Malcolm & Co. Painted Post, N. Y., Sept. 6, 1902. H. L. McNulty, Norwood, N. Y.—Dear Sir: You will find enclosed check to balance my account. Red Gum is all right it holds the old and brings new trade. Yours Very Truly, F. H. Loomis. Springfield, Ohio, Nov. 23, 1901. Law Office of James Johnson, Jr. H. L. McNulty, Norwood, N. Y.—Dear Sir: I send with this a label for Cough Remedy. I bought it at Burlington, Vt. Never used anything so good, and wish to get some more. Will you please send a couple of bottles, C. O. D., by express. Yours Truly, James Johnson, Jr. Caution Against Fraud Years of trial have demonstrated the fact, that for all Coughs, Colds, and Lung Diseases, Henry's Red Gum is wonderfully successful, in consequence of this, it has been repeatedly imitated, and the best way for the public to guard against such fraud is to look for the signature of H. L. McNulty Ph. G., which appears on every package of the genuine Red Gum Cough Remedy H. L. McNulty Ph. G. Manufacturer." (On top flap) "Guaranteed under the Food and Drugs Act, June 30, 1906, by H. L. McNulty, Serial No. 1848. Each Fluid Ounce Contains Heroin 1/8 Grain." (On bottle) "Guaranteed under the Food and Drugs Act, June 30, 1906. Guaranty No. 1848. Henry's (Trade Mark) Red Gum Cough Remedy. Each fluid ounce contains Heroin 1/8 grain, chloroform 2 Minims. A Soothing and Healing Balm for the Throat and Lungs Cures Coughs and Colds Promptly Breaks up La Grippe and Prevents Pneumonia Pleasant to take, and equally beneficial to Adults and Children. Directions: Adults—One-quarter to one teaspoonful, according to age. Shake Bottle Before Using. Price 25 cents. Manufactured only by H. L. McNulty Ph. G. Norwood, N. Y." (Blown in bottle) "Henry's Red Gum The Great Cough Remedy." The pamphlet or circular accompanying the article contained, among other things, the following: "The Universal Cure for all Throat and Lung Diseases, Coughs, Colds, Croup, La Grippe, Bronchitis, Pneumonia and Asthma." "Henry's Red Gum controls the cough because it quiets the congestion, and stops the inflammation."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Alcohol (per cent by volume)	2.73
Chloroform (minim)	1.0
Heroin (grain)	0.086
Glycerin (per cent)	11.4
Sucrose (per cent)	28.6
Invert sugar (per cent)	21.7
Ash (per cent)	6.25
Lime, gum, and phenolic resin	Present.

Misbranding of the article was alleged in the information for the reason that the following statements regarding the therapeutic or curative effects thereof appearing on the label of the carton aforesaid, to wit, "Henry's Red Gum Compound * * * Best for all Affections of the Throat and Lungs Prevents Pneumonia and Breaks up La Grippe * * * for all * * * Lung Diseases, Henry's Red Gum is wonderfully successful," and included in the circular or pamphlet aforesaid, to wit, "The Universal Cure for all Throat and Lung Diseases, * * * Croup, La Grippe, Bronchitis, Pneumonia and Asthma," were false and fraudulent in that the same were applied to the article knowingly, and in reckless and wanton disregard of their truth or falsity, so as to represent falsely and fraudulently to the purchasers thereof, and create in the minds of purchasers thereof the impression and belief, that it was, in whole or in part, composed of, or contained, ingredients or medicinal agents effective as a remedy for all affections of the throat and lungs, as a preventive of pneumonia, and as a cure for all throat and lung diseases, croup, la grippe, bronchitis, pneumonia, and asthma, when, in truth and in fact, it was not, in whole or in part, composed of and did not contain such ingredients or medicinal agents. Misbranding was alleged for the further reason that the article contained, to wit, 1 minim of chloroform and 0.086 grain of heroin per ounce, and its package failed to bear a statement on the label of the carton of the quantity or proportion of chloroform and heroin contained therein; and for the further reason that it contained 2.73 per cent of alcohol by volume, and its package failed to bear statements on the labels of the bottle and carton of the quantity or proportion of alcohol contained therein. Misbranding was alleged for the further reason that the following statement, appearing on the label aforesaid in prominent type, as the trade name of the article of drugs, to wit, "Henry's Red Gum Compound," was false and misleading in that it indicated to the purchasers thereof that the article was composed of, and contained, red gum, a harmless medicinal agent as its principal and most active ingredient, when, in truth and in fact, it was not composed of, and did not contain, red gum as its principal and most active ingredient, but did contain as its principal and most active ingredients, to wit, heroin and chloroform, dangerous, habit-forming drugs.

On September 28, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $25.

CARL VROOMAN,
Acting Secretary of Agriculture.

4832. Misbranding of Turpentine Man's, or Tydings' Remedy. U. S. v. Charles Tydings et al (Charles Tydings & Co.). Plea of guilty. Fine, $5 and costs. (F. & D. No. 6012. I. S. No. 6077–e.)

On April 24, 1915, the United States attorney for the Southern District of Florida, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Charles Tydings and Edith Tydings, copartners, trading under the firm name of Charles Tydings & Co., Ocala, Fla., alleging shipment by said defendants, in violation of the Food and Drugs Act, as amended, on or about February 20, 1913, from the State of Florida into the State of Georgia, of a quantity of Turpentine Man's or Tyding's Remedy, which was misbranded. The article was labeled: (On bottle) "This Label adopted July, 1909. (Trade mark) Turpentine Man's Registered No. 42413, or Tydings' Remedy Formerly called Turpentine Man's Sure Cure for Pock For Blood Diseases of all Kinds and Rheumatism Price, $1.50 Directions: Take one teaspoonful in glass of water after each meal, and take Tydings' Blossoms, as needed to clean out the system. Use Terkeeween Oil Nerve and Bone Liniment, or Turpentine Mans' Kidney Plasters for all aches and pains, 25¢ each. Guaranteed by Tydings & Co., under the Pure Food and Drug Act, June 30th, 1906. No. 17788. Tydings & Co., manufacturers, 27 South Main Street, Ocala, Florida." The pamphlet accompanying the article contained, among other things, the following: "The use of 1 bottle will convince the most skeptical of the real merits of 'Turpentine Man's' or Tydings' Remedy and will enable anybody to test its wonderful power in restoring and invigorating the whole system; in renovating and enriching the blood; in giving an appetite and a tone to the stomach, in curing, and in thoroughly eradicating Pock, Scrofula, Scrofulous Humors, Scald-Head, Syphilitic Affections, Cancerous Humors and growths, Ringworm, Salt Rheum, Boils Pimples and Humors on the face, Catarrh, Headaches, Dizziness, Faintness, Sick Stomach, Constipation Pains in the Back, Female Diseases of all kinds, General Debility and Rheumatism, and all diseases arising from an impure state or low condition of the blood." "* * * It positively aids and strengthens weak and impaired and debilitated organs; invigorates the nervous system; tones and strengthens the digestive organs, and imparts new life and vigor to all the organs of the body. The peculiar points of this medicine are that it does not weaken, but builds up and strengthens the whole system while it drives out and eradicates disease from the system."

Analysis of a different sample of the article by the Bureau of Chemistry of this department showed the following results:

Potassium iodid (per cent)	7.44
Alcohol (per cent)	4.9
Salicylic acid (per cent)	0.3
Glucose (per cent)	64.3
Sugar (per cent)	2.86

Traces of sulphates, phosphates, calcium, ammonium salt, and an unidentified alkaloid.

Product is a glucose sirup containing potassium iodid, alcohol, and traces of salicylic acid, phosphates, calcium, and an alkaloid.

Misbranding of the article was alleged in the information for the reason that the following statements regarding the therapeutic or curative effects thereof, appearing on the label aforesaid, to wit, "* * * for Blood Diseases of all Kinds * * *," and included in the circular or pamphlet aforesaid, to wit, "* * * its wonderful power in * * * curing and in thoroughly eradicating * * * Cancerous * * * growths, * * * Salt Rheum, * * * Catarrh * * * Female Diseases of all kinds, * * * and all diseases

arising from an impure state or low condition of the blood," were false and fraudulent in that the same were applied to the article knowingly, and in reckless and wanton disregard of their truth or falsity, so as to represent falsely and fraudulently to the purchasers thereof, and create in the minds of purchasers thereof the impression and belief, that it was, in whole or in part, composed of, or contained, ingredients or medicinal agents effective, among other things, as a remedy for blood diseases of all kinds, in curing and in thoroughly eradicating cancerous growths, salt rheum, catarrh, female diseases of all kinds, and all diseases arising from an impure state or low condition of the blood, when, in truth and in fact, it was not, in whole or in part, composed of, and did not contain, such ingredients or medicinal agents. Misbranding was alleged for the further reason that the article contained 4.9 per cent alcohol, and its package failed to bear a statement on the label of the quantity or proportion of the alcohol contained therein.

On January 18, 1916, a plea of guilty was entered on behalf of the defendant firm, and the court imposed a fine of $5 and costs.

CARL VROOMAN,
Acting Secretary of Agriculture.

4833. Adulteration of evaporated apples. U. S. v. 20 Boxes of Evaporated Apples. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 6028. I. S. No. 11522–k. S. No. C–104.)

On October 26, 1914, the United States attorney for the Eastern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 20 boxes, each containing about 50 pounds, of evaporated apples, remaining unsold in the original unbroken packages at Paris, Tex., alleging that the article had been shipped by the Ozark Apple Co., Fayetteville, Ark., and transported from the State of Arkansas into the State of Texas, and charging adulteration in violation of the Food and Drugs Act. The article was labeled: "Evaporated Apples Ozark Brand Creates Demand New Crop Bleached with sulphur Contains one-tenth of one per cent benzoate of soda Prepared with salt in solution. 50 lbs. net weight when packed by the Ozark Apple Co. Fayetteville, Arkansas."

Adulteration of the article was alleged in the libel for the reason that 15 per cent of water had been added to the apples after drying, when the goods were packed, in such manner as to reduce and lower the quality and strength thereof.

On March 7, 1916, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN,
Acting Secretary of Agriculture.

4834. Misbranding of Athlophoros. U. S. v. The Athlophoros Co., a corporation. Tried to the court and a jury. Verdict of guilty. Fine, $25 and costs. (F. & D. No. 6942. I. S. No. 2852-e.)

On May 14, 1915, the United States attorney for the District of Connecticut, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Athlophoros Co., a corporation, New Haven, Conn., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about December 19, 1912, from the State of Connecticut into the State of California, of a quantity of Athlophoros which was misbranded. The article was labeled: (On bottle) "Athlophoros. Trade Mark. Searles' Remedy for Rheumatism, Neuralgia, Sciatica, Lumbago, Internal Pains, Gout, Sick Headache and Disorders of the Kidneys and Liver. Prepared only by the Athlophoros Company, New-Haven, Conn., U. S. A. Price One Dollar. Directions. Dose.—One teaspoonful in a wine glass of water, every three hours, is an ordinary dose. In acute cases, two teaspoonfuls until relieved; then one. In case of nausea add one tablespoonful of whisky. Follow carefully the full directions accompanying every bottle. Important.—If the bowels are constipated, take 'Athlo Tablets.' The bowels must be kept open. Notice—If the use of Athlophoros should cause an unpleasant feeling in the head, a ringing in the ears, or deafness, it is no cause for alarm; on the contrary, it shows the medicine has taken hold of the disease. The unpleasant symptoms will soon pass off, leaving the patient free from Rheumatism, Neuralgia and kindred ailments." (Directions in German, French, and Spanish.) (On carton) "Guaranteed under The Food and Drugs Act, June 30, 1906. Athlophoros. Trade Mark. Searles' Remedy for Rheumatism, Neuralgia, Sciatica, Lumbago, Internal Pains, Gout, Sick Headache and Disorders of the Kidneys and Liver. Prepared only by The Athlophoros Company, New-Haven, Conn., U. S. A. Price One Dollar. This style of wrapper adopted April 1891. Robt. N. Searles." The following appears on the carton in German, French and Spanish: "Athlophoros. Trade Mark. Searles' Infallible Remedy for Rheumatism, Neuralgia, Internal Pains, Sciatica, Lumbago, and Derangements of the Kidneys and Liver. Prepared only by The Athlophoros Company, New Haven, Conn., U. S. A. Price One Dollar." The circular or pamphlet accompanying the article contained, among other things, the following: "Athlophoros * * * It reaches the liver and kidneys, cleansing them from irritating substances, and restoring the organs to regularity and health." "Should the use of Athlophoros cause an unpleasant feeling in the head, a ringing in the ears, or deafness, it is no cause for alarm; on the contrary, it shows that the medicine has taken hold of the disease. The unpleasant symptoms will soon pass off, leaving the patient free from rheumatism, Neuralgia and kindred ailments." "For sick headache—Athlophoros has proved an absolute specific—especially among ladies—for this prevalent complaint." "Our observation and experience warrant the positive claim that Athlophoros is an absolute cure for Rheumatism and Neuralgia wherever and whenever these diseases alone exist."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it was essentially a solution of glycerin, sodium salicylate, oil of cinnamon, and water.

Misbranding of the article was alleged in the information for the reason that the following statements regarding the therapeutic or curative effects thereof appearing on the label aforesaid, to wit, (on label of bottle and on carton) "Athlophoros, * * * Remedy for * * * Sciatica, * * * Gout, sick headache * * *," (on carton, in German, French, and Spanish) "Athlophores * * * Infallible Remedy for * * * Sciatica * * *," and in-

cluded in the circular or pamphlet aforesaid, to wit, "It reaches the liver and kidneys, cleansing them from irritating substances, and restoring the organs to regularity and health. The unpleasant symptoms will soon pass off, leaving the patient free from * * * neuralgia * * *. For sick headache—Athlophoros has proved an absolute specific * * *. Our observation and experience warrant the positive claim that Athlophoros is an absolute cure for * * * Neuralgia wherever and whenever these diseases alone exist," were false and fraudulent in that the same were applied to the article knowingly and in reckless and wanton disregard of their truth or falsity, so as to represent falsely and fraudulently to the purchasers thereof and create in the minds of purchasers thereof the impression and belief that it was, in whole or in part, composed of, or contained, ingredients or medicinal agents effective, among other things, as a remedy for sciatica, gout, and sick headache, for cleansing the liver and kidneys from irritating substances and restoring those organs to regularity and health, for curing neuralgia, and as a specific for sick headache, when, in truth and in fact, it was not, in whole or in part, composed of and did not contain such ingredients or medicinal agents.

On May 19, 1916, the case having come on for trial before the court and a jury, after the submission of evidence and arguments by counsel, the following charge was delivered to the jury by the court (Thomas, *D. J.*):

On the 14th of May, 1915, the learned district attorney for the United States for this district filed a criminal information against the defendant, the Athlophoros Company, charging it with a violation of what is known as the Pure Food and Drugs Act. To this information the accused has pleaded not guilty. This puts in issue every material allegation contained within the information, and the burden of proof rests upon the Government to establish the truth of all those allegations beyond a reasonable doubt.

Section 8 of the Food and Drugs Act, as amended by the act of August 23, 1912, provides, with respect to the misbranding of drugs, as follows:

That the term "misbranded" as used herein shall apply to all drugs, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular. That for the purposes of this act an article shall also be deemed to be misbranded, in case of drugs, if its package or label shall bear or contain any statement, design, or device regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein, which is false and fraudulent. (The court here reviewed the charges in the information.)

Those are all of the important allegations of this information. As I stated, the defendant's plea of "Not guilty" puts the burden of proof upon the Government to establish the truth of all of those allegations beyond a reasonable doubt.

The jurisdiction of the Federal court is invoked because the act of Congress is intended to reach an interstate shipment, and there is no question raised in this matter of the interstate shipment. The object of the act under which this prosecution is brought is to prevent the carrying in interstate commerce, that is, from one State to another, of drugs which are worthless and injurious when they are transported with false and fraudulent statements as to their curative or therapeutic effects, the object being to prevent credulous and ignorant people, and to protect the public generally, from having imposed upon them as medicine, things to be used as medicines, drugs which will not perform the functions which it is claimed they will perform, and to prevent people being injured by the use of harmful drugs. In this case it is claimed by the Government that this article is misbranded because the packages contain certain statements as to their curative or therapeutic properties which the Government claims are false and fraudulent.

Now, gentlemen, you have given very patient consideration to the extended arguments of able counsel in behalf of the Government and for this defendant, to both of whom you and I are indebted for their courtesy and their efforts to expedite this trial. Each one of them has, with much ability and free from the personalities which sometimes enter the trial of a long case, presented the evidence and their respective claims. Of course, it is now my duty to give you

the principles of law which are applicable, and which you must carefully apply to that state of the case which you find true from the evidence. You are aware, doubtless, that your verdict, as does the verdict of every other jury, consists of two things—first, the truth as you find it; and second, the principles of law applicable to that truth. In that way you reach the result which we call a verdict. These principles of law affect either the whole or some particular feature of the case, and in any instance you are to bear them carefully in mind and diligently apply them wherever they are applicable.

Courts are established to administer the law and enforce its execution. The law is the only standard by which judges and jurors can be governed, and in considering your verdict you should be governed by the law as it is given you by the court, and by the evidence as you hear it from the witness stand. You have heard the evidence offered on both sides of this controversy. From that evidence you must decide what the facts are and what the truth is.

The attorneys have had a wide range of discussion. They have had complete freedom of argument before you upon all questions of fact and have asked you to draw certain inferences and conclusions from either conceded or proven facts. It is their privilege in the argument to criticize the evidence, the attorney for the Government to criticize the conduct of this defendant, and the attorney for the defendant to criticize the conduct of the Government and its witnesses, to attack the credibility of the witnesses. Arguments of counsel are not evidence, however, and only in so far as their respective claims are, in your opinion, supported by the evidence in the case should their claim receive consideration. You should arrive at your verdict only after a cool, calm, careful, and scrutinizing consideration of all the evidence in the case.

In all criminal cases a person charged with crime, as is charged here by virtue of the provisions of this act, starts out at the threshold of the trial with the presumption in his favor that he is innocent of the crime with which he is charged. It is a humane provision of law, and it is based upon the theory that neither a jury nor the court shall presume that a person is guilty simply because he is charged with a violation of a criminal statute, but, on the contrary, the law presumes that all persons are honest and righteous in their dealings with their fellow men. So that if a criminal information has been filed by the district attorney, yet that information does not take away from this defendant the presumption of innocence; that presumption remains with it throughout the trial and it is only removed when you, as a result of the conscientious consideration which you are required to give to the evidence in this case, conclude that the defendant is guilty of the crime with which it is charged. Moreover it is a fundamental rule of law that the Government which makes this charge shall satisfy you of the guilt of the accused beyond a reasonable doubt.

Before we come to the questions particularly involved in this case I ought to and do remind and charge you that you, and you alone, are the sole judges of all questions of fact which arise here, and you are to determine those questions upon a careful consideration of all the evidence before you without direction or suggestion from the court as to what weight or value you should give to all or any part of the testimony, nor are you in any way to be governed in your conclusions by any opinion the court may express or even seem to express.

In analyzing testimony and drawing conclusions from it a juror must use all of his experience, his knowledge of human nature, his knowledge of human events, his knowledge of the motives which influence and control human action and test the evidence in the case according to such knowledge and render his verdict accordingly.

It is properly within your province, in listening to the testimony of witnesses, to observe their manner and bearing, their intelligence, their character, their means of knowledge, and to take into consideration any interest or bias or prejudice any witness may have or entertain, and reconcile so far as possible any conflicting testimony. In weighing the evidence and determining the credibility of the witnesses, and each of them, you should look to the manner and demeanor of each witness, to the readiness and willingness, or tardiness or unwillingness, if any, in answering; to the consistencies or inconsistencies of his testimony; to the interest or want of interest, if any, upon the one side or the other; to the witnesses' means of knowledge and opportunity for knowing the facts he testified to and professes to know and understand; to the reasonableness or unreasonableness, the probability or improbability of the facts and circumstances related by the witnesses when considered in connection

with all the facts and circumstances in evidence before you, and having thus carefully considered all of these matters you must fix the weight and the value of the testimony of each and every witness and the evidence as a whole.

In considering this case and in drawing your conclusions, you may be guided to some extent by the testimony of expert witnesses. I therefore deem it necessary to instruct you with reference to the evidence of such witnesses. An expert witness is one who is skilled in any particular art, trade, or profession, being possessed of peculiar knowledge concerning the same, acquired by study, observation, and practice. The jury is not necessarily bound by expert testimony, but such testimony should be considered by you in connection with all the other evidence in the case. Their evidence is subject to your consideration, to your supervision, and to your judgment. Such testimony is to be taken and treated by you like the evidence of other witnesses; and their testimony, their opinions, are subject to the same rules of credit or discredit as the testimony of other witnesses, and are not necessarily conclusive upon you. Whether the matters testified to by them are facts, whether they are true or false, and the value of their opinions, is to be determined by you and you alone; and you will carefully consider and examine their testimony in this case, subject to the same rules of credit and disbelief as the testimony of other witnesses.

The only issue of fact in controversy in this case, gentlemen, which must be determined by you, is whether the product described in the information was misbranded. The test of this misbranding is what the statements appearing on the label mean to the ordinary man, and when I refer to the label I mean likewise the circular or pamphlet which was inclosed in the package as it was transmitted in interstate commerce. In other words, what the ordinary man reading the label would understand as to what properties Athlophoros had or the curative or therapeutic effects it had. I will not attempt to define or set out the various ailments or physical disabilities which it is claimed the statements contained that this drug would cure, but these diseases or physical ailments you will understand to be such diseases or ailments as the public generally understood and the generally accepted meaning of these drugs by the public, and you are not confined in your deliberations in applying to these diseases the technical medical definition or term which has been scientifically limited by some of the witnesses. I have indicated the generally accepted understanding of the public as to what these terms mean and what physical disabilities they include, and you will apply the curative or therapeutic effect of the drug to the definition as generally understood. And you will also understand that it is not only necessary for the Government to show beyond all reasonable doubt that the statements that were made were false in fact and that the drugs did not have the curative or therapeutic effects that the statements attributed to them, but the Government must further prove beyond a reasonable doubt, that the statements are fraudulent and that the defendant knew them to be false, and that they were falsely made with the intent to deceive the public. If you find they were not false, then your inquiry is ended; if you find they were false, you have to go on further and find they were fraudulently—that they were fraudulently made with intent to deceive the public or induce the purchaser to buy them because of such statements. If you believe that these statements were false and the defendant knew they were false and made them with the intent to deceive the purchaser, or if, acting as an ordinary prudent man would act under like circumstances, he should have known that the statements were false, then you will find that the statements were falsely made as charged in the information and under such circumstances your verdict would be guilty. On the other hand, if you have a reasonable doubt as to whether the statements were false or whether they were fraudulently made, then it would be your duty to acquit this defendant. So that the mere falsity of the statements would not be sufficient to justify you in returning a verdict of guilty, but in addition to that it requires the further proof that the defendant made them knowingly and with intent to deceive and defraud.

It will not be necessary for me to enter into any definition of these various terms, but suffice it to say that a fraudulent statement is a statement which is recklessly made without knowledge of its truth, but which is really false, and an unqualified statement of that which one does not know to be true, or has no reasonable ground to believe to be true, is equivalent to a statement of that which one knows to be false. This phrase "false and fraudulent" must be taken with its accepted legal meaning, and thus it must be found that the statement contained in the package was put there to accompany the goods with actual intent to deceive—an intent which may be derived from the facts and

circumstances, but which must be established. That false and fraudulent representations may be made with respect to the curative effect of substances is, of course, obvious. The owner has the right to give his views regarding the effect of his drugs. But state of mind is itself a fact, and may be a material fact, and false and fraudulent representations may be made about it; and persons who make or deal in substances, or compositions, alleged to be curative, are in a position to have superior knowledge and may be held to good faith in their statements.

In determining whether the defendant knew the statements were false and fraudulently made, you will take into consideration all of the evidence which was offered and admitted surrounding the placing of this drug on the market, which led to placing it in interstate commerce as charged in the information, and you will consider all of the testimony with regard to these statements that is before you from the inception, dealing or treating with this drug up to the time of the filing of this information, May 22, 1915, and from all of these statements as disclosed by the evidence bearing on the conduct of the defendant with relation to this drug, determine whether it acted as an honest, fair-minded, average man would act under like circumstances, and whether it had reason to believe, acting as a reasonably prudent man would act under such circumstances, and that Athlophoros did contain the curative or therapeutic effects which are attributed to it in the various statements. In this case a number of physicians have testified, among whom, if I remember correctly, are some specialists. A chemist or analyst testified regarding the ingredients, about which there has been no dispute. The testimony of the Government is confined largely to expert medical evidence, except the testimony of the chemist or analyst. They have testified with relation to the sodium salicylate contained in this drug as disclosed by the evidence and the curative and therapeutic effect of sodium salicylate, based upon their experience as practitioners and likewise upon their reading in medical journals and treatises by eminent doctors. The defendants claim to have established the value of sodium salicylate in rheumatism, and I take it there is no contention about its value in what is known as acute articular rheumatism. The defendant further claims in that connection that these various diseases that are enumerated on the carton and in the literature are what are known as kindred ailments. If you find from the evidence that these various diseases enumerated on this carton and bottle are kindred ailments, kindred to rheumatism—if you find that to be true, you may take that into consideration as bearing upon the question of good faith or bad faith.

Perhaps at this point I ought to call your attention to this question of testimonials. You will understand that I said to you yesterday that they were not entered as proof of the truth contained in those letters, but merely bearing upon this charge or question of fraud—question of intent. If they received such letters as those, assuming those letters to be true, it is claimed that it is an evidence of the fact that they were acting in good faith in continuing their business right down to the date of this information and labeling their article as they have labeled it.

It is not my purpose to go into an analysis of the testimony or give you a synopsis of my recollection of it. It has been reviewed by counsel for both sides, and while you are not bound by their recollection of it, you will give their statements, their version of it, such consideration as you think it is entitled to receive.

In this case, while the Government must prove beyond every reasonable doubt the material allegations of the information, this need not be done with relation to every disease which is named upon this label or in the statement which is included within this package as it was transmitted in interstate commerce. If you believe from the evidence that this drug will cure many of the diseases which are named on the label or package but will not cure others in which it is alleged that it would effect a cure, and believe beyond a reasonable doubt that there are some ailments named upon the label or the literature or statement inclosed with the package, as charged in the information, concerning which the statements were false and known to be false at the time they were made, and were made for the fraudulent purpose, as charged in the information—if you are so convinced beyond a reasonable doubt of the falsity of the statements with relation to one of the diseases—then it would be sufficient to support a verdict of guilty; and if you are so convinced, your duty would be to return a verdict of guilty. But if you have a reasonable doubt as to all of these, then your duty would be to return a verdict of not guilty.

Throughout the charge I have told you that the Government must prove the material allegations of the information beyond a reasonable doubt. By reasonable doubt it is not meant that the proof should establish this defendant's guilt to a certainty, but merely that you should not convict unless from the evidence you find the defendants guilty beyond a reasonable doubt. Speculative notions or possibilities arising upon mere conjecture, not arising nor deducible from the proof or from the want of it, should not be confounded with reasonable doubt. A doubt suggested by the ingenuity of counsel, or by your own ingenuity, not legitimately warranted by the evidence, or the want of it, or one born of merciful inclination to permit the defendant to escape the penalty of the law, or one prompted by sympathy, is not what is meant by reasonable doubt. It is an honest, substantial misgiving, generated by the proof or want of it; that is, such a state of the proof as fails to convince your judgment or conscience and satisfy your reason of the guilt of the accused. If the evidence, when carefully examined, weighed, compared, and considered, produces in your minds a settled conviction or belief of the guilt of the defendants—such an abiding conviction that you would be willing to act upon it in the most weighty and important affairs of your own lives—you may be said to be free from any reasonable doubt and may find a verdict in accordance with that conviction or belief.

I have been requested by the defendant to make certain charges. I will take them up by paragraphs.

First, I charge as requested. I think I have substantially covered it.

First. This offense is that the defendant misbranded its label and circular accompanying the remedy by statements as alleged in the information regarding the curative or therapeutic effects of the medicine which, it is claimed, were false and fraudulent. If, then, the statements were not false and fraudulent, no crime has been committed and the law has not been violated. In other words, the gist of this action is that the statements were both false and fraudulent.

Second. In deciding whether they are false and fraudulent, I would instruct you that the expression "false and fraudulent" has a well-defined meaning in the criminal law. The word "false" means untruthful in its ordinary sense. The word "fraudulent," as used in this criminal statute and as a very material word in the allegation in this information, which charges the defendant with fraudulently representing certain things, is given its legal meaning, and that is that the defendant deliberately planned, and it was its purpose and intent, to deceive the public. In other words, that it made such false statements regarding the curative or therapeutic effect of the remedy, well knowing that the remedy contained nothing in its ingredients which could operate beneficially and as a remedy for the various ailments it pretended to benefit, and this for the sole purpose of deceiving the public.

Third. That the statements as to the curative or therapeutic effects of this remedy must be both false and fraudulent, within the meaning I have described. And in this connection I would inform you that it is well recognized that the curative properties of articles purveyed as medicinal preparations are matters of opinion largely, and the contrariety of views among medical practitioners and the conflict between the schools of medicine are imperfectly described. If you should find from the evidence that the defendant made its statements based upon an honest opinion arising out of this contrariety of views of medical practitioners and this conflict between the schools of medicine regarding the curative and therapeutic effect of the ingredients, you may take those facts into consideration as bearing upon the good faith of the defendant and upon his honest intention to put out an article labeled with such statements as he honestly believed to be true, and as bearing upon the question of fraudulent intent. With these variations I charge paragraph three

Fourth. In order for you to find this defendant guilty of the offense charged, you must find that the statements of the curative and therapeutic effects of this remedy were a false representation of a fact; in other words, that in labeling the article as a remedy or cure as alleged it was nothing of the sort from any point of view. If you find that there is honest diversity of opinion among the medical profession and among schools of medicine upon the curative or therapeutic effect of the ingredients of the medicine, with reference to the diseases named, and this defendant acted upon this honest opinion, this evidence will then bear upon the question of whether it made any false statements and which were made fraudulently for the purpose of deceiving the public. Of course, if you find that it did not make them fraudulently, it would then be your duty to acquit the defendant.

Further, that the use of the word "fraudulent" in this prosecution requires the Government to prove such a state of facts regarding the properties of the remedy sold as alleged, which imply a knowledge on the part of this defendant that the medicine will not do the thing that is asserted on the label or circular. In other words, it must show that the so-called remedy is absolutely worthless as to its curative or therapeutic effect upon the ailments for which it is claimed, and this the Government must prove beyond a reasonable doubt. If the Government has not proved to you, beyond a reasonable doubt by facts and circumstances, that the remedy is absolutely worthless as to its curative or therapeutic effects upon the ailments or diseases claimed for it, or any one of them set out in the information, then you must find that the defendant is not guilty and render your verdict accordingly.

Further that the word "fraudulent" is descriptive of the wrongful motive with which the statements are made, and it is the duty of the Government to satisfy you beyond a reasonable doubt that the statements were made with that wrongful motive for the purpose of deception. If, as I have said before, the motive was an honest motive, from all the facts and circumstances surrounding the preparation and sale of the remedy, due to the fact that there is a contrariety of views in the medical profession regarding the curative or therapeutic effect of the remedy, or due to any other fact in evidence, then your verdict must be for the defendant, for under such circumstances the statements can not be held to be false and fraudulent.

I further charge you that in considering the question as to whether the statements alleged in the information are false and fraudulent, you are to consider not only the statements upon the carton but upon the bottle and in the circular, and all of them, and from the entire context you are to draw your conclusions whether or not they can be said to be false and fraudulent within the meaning I have described. If the statements alleged as false and fraudulent are matters only of opinion, taking them all as I have stated, based upon the contrariety of views of practitioners and schools of medicine as to the curative or therapeutic effect of the remedy employed, you should take this seriously into consideration as bearing upon the good faith or the bad faith of the defendant, as bearing upon the defendant's honest belief that the statements on the carton and the literature were true and were not made with fraudulent intent.

Paragraphs eight and nine I must decline to charge. Eight I will charge in a modified form:

That you may take into consideration the statements upon the bottle and within the circular relative to the use of Athlo Tablets in connection with the Athlophoros, as an aid and as a part of the remedy, and when this bottle of Athlophoros was sold to the purchaser that Athlo Tablets was really an essential part of the remedy—all bearing again on its good intention.

COURT. If you wish, Mr. Webb, you may have an exception to refusal to charge paragraph nine.

Mr. WEBB. Exception to the modification.

Mr. SPELLACY. The Government has no requests.

Gentlemen, you may retire to the jury room and when you have arrived at your verdict you will make it known by your foreman,

The jury thereupon retired and, after due deliberation, returned into court with its verdict of guilty, and thereafter, on May 24, 1916, the court imposed a fine of $25 and costs.

CARL VROOMAN,
Acting Secretary of Agriculture.

4835. Adulteration and misbranding of horse feed. U. S. v. W. J. Byrnes & Co., a corporation. Plea of guilty. Fine, $25. (F. & D. No. 6095. I. S. No. 27842–e.)

On June 11, 1915, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against W. J. Byrnes & Co., a corporation, Chicago, Ill., alleging shipment by said company, in violation of the Food and Drugs Act, on or about February 4, 1913, from the State of Illinois into the State of Indiana, of a quantity of horse feed which was adulterated and misbranded. The article was labeled, in part: (On bag) "100 Lbs. Banner Horse Feed—Guaranteed Analysis: Fat 3%; Protein 10%; Fibre 8%; Carbohydrates 60%; made from rolled oats and cracked corn, manufactured by J. Byrnes & Co., Chicago, Ill." (On tag) "$50 fine for using this tag second time. No. 3115. 100 pounds W. J. Byrnes & Co. of Chicago, Ill., guarantees this Banner Horse Feed to contain not less than 3.0% of crude fat; 10.0% of crude protein and to be compounded from the following ingredients: corn, rolled barley, and rolled oats * * *."

Examination of a sample of the article by the Bureau of Chemistry of this department showed the presence of corn and rolled oats, 7.25 per cent of weed seeds and stems, and no barley.

Adulteration of the article was alleged in the information for the reason that a mixture of corn, rolled oats, weed seeds, and stems had been substituted, in whole or in part, for a mixture of corn, rolled barley, and rolled oats, which the article purported to be, and for the further reason that weed seeds and stems had been mixed and packed with the article so as to reduce, lower, or injuriously affect its quality or strength.

Misbranding was alleged for the reason that the following statements, appearing on the label aforesaid, to wit, "Made from rolled oats and cracked corn" and "Compounded from the following ingredients: corn, rolled barley, and rolled oats," were false and misleading in that they indicated to the purchasers thereof that the article consisted wholly of corn, rolled barley, and rolled oats; and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it consisted wholly of corn, rolled barley, and rolled oats, when, in truth and in fact, it did not, but did consist of a mixture of corn, rolled oats, weed seeds, and stems.

On June 29, 1916, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $25.

CARL VROOMAN,
Acting Secretary of Agriculture.

4836. Adulteration of tomato pulp. U. S. v. 50 Cases of Tomato Pulp. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 6100. I. S. No. 11115–k. S. No. C–120.)

On November 14, 1914, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel, and, on July 13, 1915, an amended libel, for the seizure and condemnation of 50 cases, each containing 100 cans, of tomato pulp, remaining unsold in the original unbroken packages at Chicago, Ill., alleging that the article had been shipped on October 26, 1914, by Luiqi Vecchi, Hazlet, N. J., and transported from the State of New Jersey into the State of Illinois, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that, when it was so shipped as aforesaid, it consisted in part of a filthy vegetable substance; for the further reason that it consisted in part of a filthy animal substance; for the further reason that it consisted in part of a decomposed vegetable substance; for the further reason that it consisted in part of a decomposed animal substance; for the further reason that it consisted in part of a putrid vegetable substance; and for the further reason that it consisted in part of a putrid animal substance.

On April 15, 1916, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN,
Acting Secretary of Agriculture.

4837. Misbranding of Gerstle's Female Panacea. U. S. v. Gerstle Medicine Co., a corporation. Submitted to information. Fine, $37.50 and costs. (F. & D. No. 6103. I. S. No. 7064–e.)

On February 11, 1915, the United States attorney for the Eastern District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Gerstle Medicine Co., a corporation, Chattanooga, Tenn., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about October 16, 1912, from the State of Tennessee into the State of North Carolina, of a quantity of "Gerstle's Female Panacea" which was misbranded. The article was labeled: (On bottle) "G. F. P. Trade Mark. Gerstle's Female Panacea Contains 20 per cent alcohol. Prepared by Gerstle Medicine Co. Chattanooga, Tenn. For Irregular, Painful, Profuse, or Suppressed Menses, Whites, Falling of the Womb, Female Weakness, and Nervousness. Directions.—Shake Well Before Using. For Suppressed Menses.—Take a tablespoonful three times a day, before meals, and continue until the flow is well established. For Irregular, Painful, or Profuse Menses.—Begin a few days before the menses appear and take from one to two teaspoonfuls four times a day, morning, noon, and evening, and before retiring. After the period has passed reduce the dose to a teaspoonful three times a day. Continue this form of treatment until the desired result is obtained. For Whites, Falling of the Womb, Change of Life, and as a Tonic.—Take from one to three teaspoonfuls three times a day as long as required. Serial No. 183. Guaranteed by Gerstle Medicine Co. Under the Food and Drugs Act. June 30, 1906. Registered in U. S. Patent Office. Important. While using this medicine the bowels should be kept open and regular. We recommend St. Joseph's Liver Regulator for this purpose, as we know what it contains, and know it will work in perfect harmony with this medicine. Gerstle Medicine Co. Chattanooga, Tenn." (Blown in bottle) "G. F. P. Gerstle Medicine Co. Chattanooga, Tenn." (On carton) "Gerstle's Female Panacea G. F. P. Trade Mark. Contains 20 Per Cent Alcohol. Prepared by Gerstle Medicine Co. Chattanooga, Tenn. For Irregular, Painful, Profuse, or Suppressed Menses, Falling of the Womb, Whites, Female Weakness, and Nervousness. Price, $1 per Bottle. Six Bottles, $5. Serial No. 183. Guaranteed by Gerstle Medicine Co. under the Food and Drugs Act, June 30, 1906. Registered in U. S. Patent Office." (Side of carton) "G. F. P.—Gerstle's Female Panacea for Diseases of Women. Caution. To insure the public of getting the genuine G. F. P. (Gerstle's Female Panacea) the present owners herewith produce a fac-simile signature of the original proprietor of the medicine, which signature will be printed on all cartons and wrappers containing this medicine. None genuine without the signature of S. Gerstle." (Other side of carton) "G. F. P.—Gerstle's Female Panacea Has for many years been used most successfully by women who suffered from the diseases peculiar to their sex, and they have written us many letters in commendation of its curative power. It is a highly invigorating tonic and will produce good results. We recommend it as being specially adapted to the varying conditions produced by the Change of Life. It has proven very helpful to the young girl just merging into womanhood, and to the nervous, overworked, exhausted woman. It has wielded a powerful influence over the various forms of menstrual derangements."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it was a hydroalcoholic solution containing 1.6 per cent of vegetable extractive matter, including a trace of alkaloid, and 16.3 per cent by volume of alcohol.

Misbranding of the article was alleged in the information for the reason that the following statements regarding the therapeutic or curative effects thereof, appearing on the labels of the bottle and carton aforesaid, to wit: "Gerstle's Female Panacea * * * For Irregular, Painful, Profuse or Suppressed Menses, Whites, Falling of the Womb, Female Weakness," were false and fraudulent in that the same were applied to the article knowingly, and in reckless and wanton disregard of their truth or falsity, so as to represent falsely and fraudulently to the purchasers thereof, and create in the minds of purchasers thereof the impression and belief, that it was, in whole or in part, composed of, or contained ingredients or medicinal agents effective, among other things, as a female panacea for irregular, painful, profuse, or suppressed menses, whites, falling of the womb, and female weakness, when, in truth and in fact, it was not, in whole or in part, composed of, and did not contain, such ingredients or medicinal agents.

On May 23, 1916, the defendant company entered its submission to the information, and the court imposed a fine of $37.50 and costs.

CARL VROOMAN,
Acting Secretary of Agriculture.

4838. Misbranding of Dr. Thacher's Cholera Mixture and Dr. Thacher's Amber Injection. U. S. v. Thacher Medicine Co., a corporation. Submission to information entered. Fine, $75 and costs. (F. & D. No. 6129. I. S. Nos. 9403–e, 8229–e, 9457–e.)

On October 18, 1915, the United States attorney for the Eastern District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Thacher Medicine Co., a corporation, Chattanooga, Tenn., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about November 5, 1912, from the State of Tennessee into the State of Georgia, of quantities of Dr. Thacher's Cholera Mixture and Dr. Thacher's Amber Injection which were misbranded, and the sale by said company, on or about February 13, 1913, under a written guaranty that the article was not a misbranded article within the meaning of the Food and Drugs Act, of a quantity of Dr. Thacher's Amber Injection, which was a misbranded article within the meaning of said act as amended, and which said article, in the identical condition in which it was sold, was shipped by the purchaser thereof, on or about April 10, 1913, from the State of Tennessee into the State of Arkansas, in further violation of said act.

The cholera mixture was labeled: (On carton) "Dr. Thacher's Cholera Mixture 12½% Alcohol. 14/25 Grs. Sulphate of Morphine to Fluid Ounce. Price 25c. Prepared for Thacher Medicine Co. Chattanooga, Tenn. For all cases of Cholera, Cholera Morbus, Diarrhœa, Dysentery, Cramps, Winter Diarrhœa, Flux, etc. For Children Teething Dr. Thacher's Cholera Mixture 905. Guaranteed by Thacher Medicine Co. under the Food and Drugs Act, June 30, 1906. Price 25 cents. This preparation, different from anything offered before; does not bind the bowels, but brings them back to their normal condition and relieves all trouble." (On bottle) "Dr. Thacher's Cholera Mixture 12½% Alcohol, 14/25 Gr. Morphine to Fluid Ounce. A Teaspoonful Contains 7½ Drops Alcohol and 1/14 gr. Morphine. Prepared for Thacher Medicine Co. Chattanooga, Tenn. For Cholera Morbus, Diarrhœa, Dysentery, Children Teething and all sudden attacks of Cramps and Pains in the Bowels. Does not bind the bowels, but brings them back to their natural action. Eat no solid food while taking. Guaranteed by Thacher Med. Co. under Food & Drugs Act, June 30, '06. No. 905. Directions. For a Child 1 year old, 10 drops; 2 years 15 to 20 drops; 4 to 8 years, 20 to 25 drops; 10 to 15 years, 30 drops, or ½ teaspoonful; 18 years and grown persons, 1 teaspoonful. Take in a spoonful of water after each action of the Bowels. Shake the bottle well."

Analysis of a sample of this article by the Bureau of Chemistry of this department showed the following results:

Alcohol (per cent by volume)	7.7
Morphine sulphate (grains per fluid ounce)	0.449
Solids (grams per 100 cc)	34.8
Also an emodin-bearing drug, ammonium salt, carbonate, sugar, and aromatics.	

Misbranding of the article was alleged in the information for the reason that the following statement, appearing on the label aforesaid, to wit: "12½% Alcohol," was false and misleading, in that it indicated to the purchasers thereof that the article of drugs contained 12½ per cent of alcohol, when, in truth and in fact, it did not, but did contain a less amount thereof, to wit, 7.7 per cent.

Misbranding was alleged for the further reason that the following statements regarding the therapeutic or curative effects of the article, appearing

on the label aforesaid, to wit: (On carton) "Dr. Thacher's Cholera Mixture * * * for all cases of Cholera * * * Diarrhoea, Dysentery * * * Flux * * * This preparation * * * does not bind the bowels, but brings them back to their normal condition * * *." (On bottle.) "Dr. Thacher's Cholera Mixture. * * * For * * * Diarrhoea, Dysentery, Children Teething," were false and fraudulent in that the same were applied to the article knowingly, and in reckless and wanton disregard of their truth or falsity, so as to represent falsely and fraudulently to the purchasers thereof, and create in the minds of purchasers thereof the impression and belief, that it was, in whole or in part, composed of, or contained, ingredients or medicinal agents effective, among other things, as a remedy for all cases of cholera, diarrhea, dysentery, and flux, for restoring the bowels to their normal condition, and as a remedy for ailments of teething children, when, in truth and in fact, it was not, in whole or in part, composed of, and did not contain, such ingredients or medicinal agents. The amber injection was labeled: (On bottle) "Dr. Thacher's Amber Injection Cures Gonorrhœa in 3 days. Syringe with bottle ready to use. Price 50 cents. Thacher Medicine Co., Chattanooga, Tenn." (Blown in bottle) "Thacher Medicine Co., Chattanooga, Tenn." (On carton) "Dr. Thacher's Amber Injection 3% Alcohol, 1½ Grs. Opium to one fluid ounce. 905. Guaranteed by Thacher Medicine Co. under the Food and Drugs Act, June 30, 1906. For Gonorrhœa, Gleet, Spermatorrhœa & Whites No Danger of Stricture. Effective in Ordinary Cases in Three Days. A syringe with every bottle. Full directions inside Price 50 cents Prepared by Thacher Medicine Co., Chattanooga, Tenn. For Unfortunate Young Men This Injection is a Safe and Sure Remedy for these troublesome diseases. The time generally taken for a cure is from two to three days, although in severe cases it may be longer. There is no need of using the Injection after the discharge has stopped. Avoid the 'After Effects' The 'After Effects' of Gonorrhœa are almost if not quite as bad as the disease itself. General Debility follows almost every case, and Rheumatism is the result in a vast number. It Drains the System, Impoverishes the Blood, Deranges the Kidneys, and Impairs the Digestion. After the Gonorrhœa is cured you should immediately begin treatment of a Tonic, Alterative and Blood Purifying character, and to restore the derangement of the digestive functions. Dr. Thacher's Liver and Blood Syrup Will be found an acceptable and effective remedy. It is Tonic and Alterative and has Great Merit in the Treatment of Indigestion, Kidney and Liver Diseases and Purifying the Blood, complications that almost Always follow Gonorrhœa. Six bottles of Dr. Thacher's Liver and Blood Syrup should be taken to be Sure that the Gonorrhœal Poison is driven out of the System. Dr. Thacher's Liver and Blood Syrup was originated by Dr. H. S. Thacher, who discovered and perfected Dr. Thacher's Amber Injection. It is put up in Orange Cartons. Accept no substitutes for either preparation. No Danger of Stricture In using this Injection there is no danger from Stricture, that terrible affliction that comes upon many who use the common injections that are made up or given to you on paper by friends who say they have been cured by their use. None genuine without the signature of H. S. Thacher."

Analyses of samples of this article from both shipments by said Bureau of Chemistry showed the following results, respectively:

Sample 1.

Alcohol (per cent by volume)	2.1
Opium (grain per fluid ounce)	1.38
Solids (grams per 100 cc)	0.93
Ash (grams per 100 cc)	0.31
Zinc sulphate	Present.

Sample 2.

Solids (grams per 100 cc)	0.96
Alcohol (per cent by volume)	0.94
Opium (grains per fluid ounce)	2.08
Zinc sulphate (grams per 100 cc)	0.63
Volatile acid as acetic:	
First bottle (grams per 100 cc.)	0.42
Second bottle (grams per 100 cc.)	0.12
Test for zinc and acetates	Positive.

Product is a hydroalcoholic solution of opium and zinc sulphate to which acetic acid has been added.

Misbranding of this article was alleged in the information for the reason that in one of the shipments it contained, to wit, 2.08 grains of opium per fluid ounce and 0.94 per cent of alcohol by volume, and in the other consignment 1.38 grains of opium per fluid ounce and 2.1 per cent of alcohol, and the package containing the same failed to bear a statement on the label in either case of the quantity or proportion of opium and alcohol contained therein. Misbranding was alleged for the further reason that the following statements regarding the therapeutic or curative effects of the article appearing on the label aforesaid, to wit, (On bottle) "Dr. Thacher's Amber Injection Cures Gonorrhœa in three days," (on carton) "Dr. Thacher's Amber Injection * * * for Gonorrhœa, Gleet, Spermatorrhœa & Whites. No danger of Stricture * * * This injection is a Safe and Sure Remedy for these troublesome diseases. The time generally taken for a cure is from two to three days, although in severe cases it may be longer," were false and fraudulent in that the same were applied to the article knowingly, and in reckless and wanton disregard of their truth or falsity, so as to represent falsely and fraudulently to the purchasers thereof, and create in the minds of purchasers thereof the impression and belief, that it was, in whole or in part, composed of or contained ingredients or medicinal agents effective, among other things, as a cure for gonorrhea, gleet, spermatorrhea, and whites, and for preventing stricture in gonorrhea and gleet, when, in truth and in fact, it was not, in whole or in part, composed of and did not contain such ingredients or medicinal agents.

On May 25, 1916, the defendant company entered its submission to the information, and the court imposed a fine of $75 and costs.

CARL VROOMAN,
Acting Secretary of Agriculture.

4839. Alleged misbranding of Raymond's Pectoral Plaster. U. S. v. George T. Raymond, trading as Raymond & Co. Tried to the court and jury. Verdict of acquittal. (F. & D. No. 6136. I. S. No. 4509-e.)

On March 10, 1915, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against George T. Raymond, trading as Raymond & Co., Plainfield, N. J., alleging shipment by said defendant, in violation of the Food and Drugs Act, as amended, on or about January 11, 1913, from the State of New Jersey into the State of Missouri, of a quantity of Raymond's Pectoral Plaster which was charged to have been misbranded. The article was labeled: (On box) "Raymond's Pectoral Plaster Sure Cure for Coughs Especially Whooping Cough." (On bottom of box) "No. 1243 Guaranteed under the Food and Drugs Act, June 30, 1906." (On two sides) "Raymond's Pectoral Plaster." (On other two sides) "Two Dozen Pectoral Plasters." The circular or pamphlet accompanying the article contained, among other things, the following: "Raymond's Pectoral Plaster Cures Whooping Cough, Croup, Coughs, Hoarseness, Bronchitis and Spasmodic Asthma. It also cures pains such as Sciatica, Lumbago, Neuralgia, Rheumatic Pains, etc., in a wonderfully short time, often in 15 or 20 minutes." "For Whooping Cough and any throat or lung diseases, apply to the upper part of the chest or between the shoulders, or in both places in a severe case. If the patient is not cured in a week, remove the plaster, wash as before and apply another in its place. Repeat the treatment until cured."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that the product was a lead plaster prepared from a soap or soap base, made up mostly of cottonseed stearine with an admixture of rosin.

Misbranding of the article was alleged in the information for the reason that the following statements regarding the therapeutic or curative effects thereof, appearing on the label aforesaid, to wit, "Raymond's Pectoral Plaster Sure Cure for * * * Whooping Cough," and included in the circular or pamphlet aforesaid, to wit, "Raymond's Pectoral Plaster Cures Whooping Cough, Croup, * * * Bronchitis * * *," "It also cures pains such as Sciatica * * *," "For Whooping Cough and any throat or lung diseases * * * If the patient is not cured in a week, remove the plaster, wash as before and apply another in its place. Repeat the treatment until cured," were false and fraudulent in that the same were applied to the article knowingly, and in reckless and wanton disregard of their truth or falsity, so as to represent falsely and fraudulently to the purchasers thereof, and create in the minds of purchasers thereof the impression and belief, that it was, in whole or in part, composed of, or contained, ingredients or medicinal agents effective, among other things, as a sure cure for whooping cough, and as a cure for croup, bronchitis, sciatica, and any throat or lung diseases, when, in truth and in fact, it was not, in whole or in part, composed of, and did not contain, such ingredients or medicinal agents.

On February 19, 1916, the case having come on for trial before the court and a jury, after the submission of evidence and arguments by counsel, the case was given to the jury, which, after due deliberation, returned a verdict of not guilty.

CARL VROOMAN,
Acting Secretary of Agriculture.

4840. Misbranding of Texas Wonder. U. S. v. Ernest W. Hall. Tried to the court and a jury. Verdict of acquittal by direction of court. (F. & D. No. 6138. I. S. No. 7919–e.)

On June 30, 1915, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Ernest W. Hall, St. Louis, Mo., alleging shipment by said defendant, in violation of the Food and Drugs Act, as amended, on or about December 14, 1912, from the State of Missouri into the State of Ohio, of a quantity of Texas Wonder which was misbranded: The article was labeled: (On bottle) "The Texas Wonder Contains 43 Per Cent Alcohol. No. 874. Reg. U. S. Pat. Off. Shake Well Before Using. Directions— For adults, 15 to 25 drops two nights in succession, then 15 to 25 drops every other night for a week, then discontinue for a week, and if not well take another week as before and so on until cured. For children, 5 to 15 drops, according to age, same manner as for adults. If not cured in two weeks, increase dose for children. To be taken at bedtime in from 2 to 3 teaspoonful of water. Price $1.00 per bottle. Dr. E. W. Hall, Sole Manufacturer. Office 2926 Olive Street, St. Louis, Mo." (On carton) "A Texas Wonder Hall's Great Discovery Contains 43% Alcohol Before Diluted. 5% after diluted. The Texas Wonder, Hall's Great Discovery, for Kidney and Bladder Troubles, Diabetes, Weak and Lame Backs, Rheumatism, Removes Gravel. Regulates Bladder Trouble in Children. One small bottle is 2 month's treatment and seldom fails to cure any case above mentioned. Price, One Dollar Per Bottle. Registered in U. S. Patent Office. Dr. E. W. Hall, Sole Manufacturer, St. Louis, Mo." Same statement on other side of carton. "The Pure Food and Drugs Act, June 30, 1906, Compels the manufacturer to place on such label and carton, the amount of alcohol, each package contains. Five of the ingredients of the Texas Wonder, Hall's Great Discovery contains 43 per cent. alcohol before diluted for use, but after it is diluted as directed below, each dose will contain only 5 per cent. alcohol. Directions Add to 25 drops of the Texas Wonder 3 teaspoonfuls of water equal 180 drops of water, add to 15 drops of the Texas Wonder 2 teaspoonfuls of water equal 120 drops of water. The alcohol contained in the Texas Wonder is necessary to preserve and to extract the active medicinal agents from the crude drug. E. W. Hall. Guaranteed by E. W. Hall, under the Food and Drugs Act, June 30, 1906. No. 874." The circular or pamphlet accompanying the article contained, among other things, the following: "A Texas Wonder Hall's Great Discovery For Kidney and Bladder Troubles. One small bottle of the Texas Wonder Hall's Great Discovery, cures all Kidney and Bladder Troubles, removes Gravel, cures Diabetes, Neuralgia, Weak and Lame Backs, Rheumatism and all irregularities of the Kidneys and Bladder in both men and women." "Milledgeville, Ky., Jan. 1, 1903. Dr. E. W. Hall, St. Louis, Mo. Dear Sir:—I have been a great sufferer from kidney disease and was treated by my home physicians with no benefit. Your Texas Wonder has cured me and I am satisfied it saved my life and I can cheerfully recommend it to ladies suffering with kidney and bladder troubles. Respectfully, Mrs. Eliza Frost." "Dawson, Ala., July 18, 1910. This is to certify that I was a great sufferer from Stones in the Liver and Kidneys and the doctors said they could do me no good. I have used one bottle Hall's Texas Wonder, of 2926 Olive St. Louis, and it has made a complete cure of me, and I think it the best kidney and bladder medicine on earth. I cheerfully recommend it to the public. George F. Adams, R. F. D. No. 1, Box 87."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Alcohol (per cent)	41.6
Volatile oils (mainly turpentine) (per cent)	16.0
Acid number of resins	88.0

Essentially a hydroalcoholic solution of an oleoresin such as gum turpentine or venice turpentine, copaiba, and oil of turpentine.

Misbranding of the article was alleged in the information for the reason that the following statements regarding the therapeutic or curative effects thereof, appearing on the label aforesaid, to wit: (On carton) "The Texas Wonder Hall's Great Discovery, For Kidney and Bladder Troubles, Diabetes, * * * Rheumatism, Removes Gravel. * * * One small bottle is 2 months treatment and seldom fails to cure any case above mentioned." And included in the circular or pamphlet aforesaid, to wit, "One small bottle of the Texas Wonder, Hall's Great Discovery, cures all Kidney and Bladder Troubles, removes gravel, cures Diabetes, * * * Rheumatism and all irregularities of the Kidneys and Bladder in both men and women." "I have been a great sufferer from kidney disease * * * Texas Wonder has cured me * * *". I was a great sufferer from Stones in the Liver and Kidneys * * * used one bottle Hall's Texas Wonder * * * It has made a complete cure of me * * *," were false and fraudulent, in that the same were applied to the article knowingly, and in reckless and wanton disregard of their truth or falsity, so as to represent falsely and fraudulently to the purchasers thereof, and create in the minds of purchasers thereof the impression and belief, that it was, in whole or in part, composed of, or contained, ingredients or medicinal agents effective, among other things, as a cure for all kidney and bladder troubles, for gravel, diabetes, rheumatism, and all irregularities of the kidneys and bladder in both men and women, and for stones in the liver and kidneys, when, in truth and in fact, it was not, in whole or in part, composed of, and did not contain, such ingredients or medicinal agents.

On January 26, 1916, the case having come on for trial before the court and a jury, after the submission of evidence and argument by counsel, the jury returned a verdict of not guilty by direction of the court.

CARL VROOMAN,
Acting Secretary of Agriculture.

4841. Adulteration and misbranding of Jamaica rum, cognac, and Irish whisky. U. S. v. 10 Cases of Jamaica Rum, 12 Cases of Cognac, and 15 Cases of Irish Whisky. Consent decrees of condemnation and forfeiture in the rum and cognac cases. Product ordered released on bond. Default decree of condemnation and forfeiture in the case of the Irish whisky. Product ordered destroyed. (F. & D. No. 6164. I. S. Nos. 928–k, 930–k, 931–k. S. No. E–174.)

On December 10, 1914, the United States attorney for the District of Rhode Island, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district 3 libels for the seizure and condemnation of 10 cases of Jamaica rum, 12 cases of cognac, and 15 cases of Irish whisky remaining unsold in the original unbroken packages at Providence, R. I., alleging that the articles had been shipped, on or about July 11, 1914, by A. Blum, jr., Sons, New York, N. Y., and transported from the State of New York into the State of Rhode Island, and charging adulteration and misbranding in violation of the Food and Drugs Act. The cases of Jamaica rum were labeled: "G Eustace Burke And Bro, Ltd, Old London Dock Jamaica Rum, Kingston." The bottles in these cases were labeled: "G. Eustace Burke And Bro Ltd" (Coat of arms of Great Britain—also native field scene with man and woman in foreground) "Kingston, Jamaica, Old Jamaica Rum." The cases containing the cognac were labeled: "Louis Bechade, Cognac, France X X X B 12/1 bouteilles New York." The bottles in these cases were labeled: (Capsule) "Louis Bechade" (Neck Label) "Three Stars" (Principal Label) "Louis Bechade Cognac The Produce Of France" (Picture of man on horse) The cases containing the Irish whisky were labeled: "Very Old Irish Whiskey, Dublin, Ireland, B 15 New York" (British Coat of Arms). The bottles in these cases were labeled: "The Dews of Erin" (Gold Coins and Picture of Charles Stewart Parnell) "Trade Mark Charles Stewart Parnell" (Harp in wreath of shamrocks) "Finest Old Irish Pot Still Whiskey the 'Parnell Brand' of Irish Whiskey is distilled in Pot Stills from the choicest Barley Malt, the product of Galway and Limerick Counties of Ireland, and guaranteed to be absolutely Pure. It has been specially selected for export and is highly recommended to all connoisseurs Pattisons, Roberts & Co., Limited, London, Edinburgh, and Dublin."

Adulteration of these articles was alleged in the libels for the reason that they were labeled as aforesaid, and purported by said labels to be pure Jamaica rum, cognac, and Irish whisky, respectively, but a certain substance, to wit, neutral spirits, had been substituted in part for Jamaica rum, cognac, and Irish whisky, as the case might be.

Misbranding was alleged in the libels for the reason that the bottles containing the articles bore labels, respectively, as aforesaid, and purported by the labels which they bore to be pure Jamaica rum, cognac, and Irish whisky, respectively, but were, in fact, composed in whole of neutral spirits, which had been substituted for Jamaica rum, cognac, and Irish whisky, as the case might be. Misbranding was alleged for the further reason that the bottles bore labels, statements, designs, and devices as aforesaid, which said labels, statements, designs, and devices were false and misleading, to wit, said products purported by said labels, statements, designs, and devices, to be pure Jamaica rum, cognac, and Irish whisky, respectively, when, in truth and in fact, they were not, but neutral spirits had been mixed and packed therewith so as to reduce, lower, and injuriously affect their quality and strength. Misbranding was alleged for the further reason that the articles bore labels reading as aforesaid and purported by said labels to be pure Jamaica rum, cognac, and Irish whisky, respectively, but were, in fact, composed in large part of neutral spirits other than Jamaica

rum, cognac, and Irish whisky, and said products were so labeled and branded as to mislead the purchaser.

On April 30, 1915, the said A. Blum, jr., Sons, New York, N. Y., claimant, having filed its claim and answer, praying that the Jamaica rum and cognac be delivered to it, judgments of condemnation were entered, and it was ordered by the court that the products should be delivered to said claimant company upon payment of the costs of the proceedings and the execution of bond in the sum of $200 in each case, in conformity with section 10 of the act.

On June 29, 1916, no claimant having appeared for the Irish whisky, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN,
Acting Secretary of Agriculture.

4842. Misbranding of Abbott Bros. Rheumatic Remedy. U. S. v. Abbott Bros. Co., a corporation. Tried to the court and a jury. Verdict of guilty. Fine, $200 and costs. (F. & D. No. 6190. I. S. No. 7945–c.)

On November 4, 1915, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Abbott Bros. Co., a corporation, Chicago, Ill., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about January 31, 1913, from the State of Illinois into the State of Ohio, of a quantity of "Abbott Bros. Rheumatic Remedy," which was misbranded. The article was labeled: (On carton) "New Style Package, Dec. 1912. Abbott Bros. Rheumatic Remedy Contains 24% Pure Grain Alcohol To Preserve Its Vegetable Ingredients. For Rheumatism of every form and stage, including Inflammatory, Muscular, Articular, Sciatica, Gout, Lumbago, Acute, Chronic, etc., Constipation, Inactive or Torpid Liver, Kidney and Bladder Troubles, Backache, Shifting Pains, Sharp-Shooting or Dull Aches and Pains in any part of the body, Swellings, Inflammation, Soreness and Stiffness in the Joints and Muscles, Uric Acid and all deep-seated Blood Disorders Inherited or Contracted, Scrofula, Eczema, and for improving the general health. Price One Dollar Contains no Opiates or Narcotics Guaranteed by Abbott Bros. Co., under the Food and Drugs Act, June 30, 1906. Serial No. 441. Manufactured Only by Abbott Bros. Company 711 South Dearborn Street Chicago, Ill., U. S. A." (On back of carton) "Abbott Brothers' Rheumatic Remedy The New One Dollar Size Adopted March 1st, 1902. Established 1888. Put up only by Abbott Bros. Co., Chicago, Ill." (On sides of carton) "Symptoms of Rheumatism. Shifting pains, tenderness, stiffness, soreness and inflammation of the muscles. Pain increased by bringing muscles into action. Inflammation of the fibrous tissues and distress in the region of the heart. Joints swollen, stiff, painful, feverish and sore to the touch. Lacerating sciatic pains in thighs and legs. Intense burning or gnawing pain in joints. Pains and aches in the bones. Soreness and sharp pains in the back, sharp shooting or piercing pains in different parts of the body. Numbness and needle-like pricking sensation. Pains in the kidneys and bladder. Pain and stiffness in neck and shoulders. In acute rheumatism the fever is more pronounced. For all forms of rheumatism and all Uric Acid Diathesis, former sufferers scattered all over the country recommend Abbott Brothers' Rheumatic Remedy. A guarantee. We positively guarantee that Abbott Bros. Rheumatic Remedy Does not contain any Salicylic Acid, Mercury, Morphine, Opium, Heroin, Cocaine, Alpha or Beta Eucaine, Chloroform, Cannabis Indica, Chloral Hydrate or Acetanilide or any derivative or preparation of any such substance contained therein. Abbott Bros. Co. Chicago, Ill. Abbott Brothers' Rheumatic Remedy." (On top flap) "Guaranteed by Abbott Bros. Co., under the Food and Drugs Act, June 30, 1906. Serial Number 441 Abbott Bros. Co., Chicago, Ill." (On bottle) "New Label Adopted April 25th, 1911. Abbott Brothers Rheumatic Remedy Contains 24 Per Cent Alcohol To Dissolve and Preserve Ingredients For all Uric Acid Troubles, Eczema, Kidney and Bladder Disorders, Backache, Stiff and Inflamed Joints, Aching Muscles, Bone Pains, Neuralgia, Gout, Sciatica, Lumbago, Inflammatory, Muscular, Articular, Acute, Chronic and all other forms of Rheumatism. Shake Bottle Before Using Dose: For Adults: One small teaspoonful in glass of water either one half hour before meals or three hours after each meal. If it acts too freely on the bowels, reduce dose one-half. Drink at least three glasses of water between meals. For Children: From 5 drops to one-half teaspoonful, according to age. It is very important that bowels move freely three times or at least twice, daily. If a laxative is needed take Smead's Regulator Tablets. For weak stomach, indigestion, etc., take Smead's Dyspepsia Tablets. See page

30 of book wrapped around bottle. Guaranteed by Abbott Bros. Co., under the Food and Drugs Act, June 30, 1906 Serial No. 441. Price $1.00 Six Bottles $5.00 None genuine without this signature Abbott Bros. Prepared Only by Abbott Bros. Company 711 So. Dearborn St., Chicago, Ill., U. S. A." (Blown in bottle) "Rheumatic Remedy Abbott Bros. Abbott Bros. Chicago Rheumatic Remedy Est. 1888." The booklet accompanying the article contained, among other things, the following: "Abbott Bros. Rheumatic Remedy Guaranteed to contain no opiates Guaranteed by Abbott Bros. Co. Under the Food and Drugs Act, June 30, 1906. Serial Number 441 For Rheumatism, Gout, Neuralgia, Sciatica, Lumbago, Backache, Kidney and Liver Troubles, Shifting Pains and all Manifestations of Uric Acid Diathesis, Eczema, Etc. Designed to give prompt relief and restore health. Abbott Bros. Co. 711 S. Dearborn St. Chicago, Ill." "Cured of Sciatica Six Years Ago. Mr. Herman C. Beckman, who is connected with the DeLaval Separator Company, Canal and Randolph streets, Chicago, residence Berwyn, Ill., writes: 'Having been cured of rheumatism from which I suffered severely I desire to assist as much as possible in the relief of others. I therefore take pleasure in recommending Abbott Bros.' Rheumatic Remedy which cured me of Sciatica six years ago." "Mr. Arthur Peterson, 1422 Concord St., Keokuk, Ia., writes: 'I have been to Hot Springs twice on account of gonorrheal rheumatism. I was helped for a little while when there, but soon after leaving the springs the trouble would come right back on me again. I had the rheumatism four years and had to have a stick to help me along. A friend of mine who had also taken the baths at the Government Bath House told me Abbott Bros. Rheumatic Remedy had cured him in fourteen days. I would not buy it because I had taken so much treatment that I did not think there was anything in this world that could help me. When my friend saw that I would not buy Abbott Bros. Rheumatic Remedy, he bought a bottle for me. I was then laid up in bed, but after I had taken half of the bottle I got out of bed and could walk as well as ever. Hot Springs could not cure me, but Abbott Bros. Rheumatic Remedy did it for me. I am well known here and our people know I could not walk without a stick. After I got cured they all wanted to know what in the world cured me.'" "Death of Child Averted. Mrs. W. S. Edwards, 1122 North Twenty-first St., Birmingham, Ala., writes: 'If my friends could not testify to what I say regarding my child's case, I would not dare say it, because I could not expect anybody to believe it. My daughter Mattie, when a little miss 13 years of age, was down with acute inflammatory rheumatism for four months. I hope I may never again see anyone suffer as she did. You could hear her scream a block. She was in a drawn position and was not able to move or straighten. I dared not raise her head off her pillow on account of heart failure. Her doctor said she was liable to pass away at any moment. She was bedfast four months and I believe she would have died but for Abbott Bros.' Rheumatic Remedy. At the time I began this treatment I hesitated, as her heart was so affected I was afraid to take the heart stimulants from her. She was so weak I only gave her four drops to the dose. It acted on her kidneys and liver as nothing had ever done before. In three days she wanted to sit up in bed, began to eat and then improved every day. She had not taken all of two bottles of Abbott Bros.' Rheumatic Remedy when she was entirely cured. She is now 18 years of age, weighs 127 pounds, and is in fine health." "Mr. Chas. E. Piper, Supreme Scribe of the Royal League, whose offices are in the Masonic Temple, Chicago, residence at Berwyn, Ill., writes: It gives me great pleasure to inform you that your Abbott Bros.' Rheumatic Remedy has cured my wife's mother, Mrs. Gregory, of Rheumatoid Arthritis. She had been a great sufferer for many years and her hands seemed hopelessly crippled. Her finger joints were stiff, badly swollen, and her fingers were drawn

shapeless. She had great difficulty in using her hands and there seemed no hope of her ever regaining their usefulness. Your Abbott Bros.' Rheumatic Remedy had been very highly recommended to me several times and upon my request mother finally decided to try it. A few bottles of it relieved her pain, but she took about six or seven bottles before much improvement was noticeable in her joints. They improved gradually and we were delighted with such favorable results. At the end of four months she had entirely recovered. She rejoices over the regaining the use of her hands and never tires of praising your Abbott Bros.' Rheumatic Remedy. The cost of Abbott Bros. Rheumatic Remedy is small and the time required to take it is short. There are many instances in which $5.00 spent for six bottles was the total cost of lasting relief." "Twelve Years of Suffering Ended. Mr. W. A. Lewis, of the Terre Haute (Ind.) Fire Department, Fourth and Locust Sts., writes: I was as helpless as an infant when my wife got Abbott Bros.' Rheumatic Remedy for me. My limbs were frightfully swollen and I was suffering more than tongue can tell with inflammatory rheumatism. I had been on my back almost four months and had been afflicted with the disease twelve years. The doctor couldn't ease the pains for one minute. He kept my limbs wrapped with cotton and soaked it with liniment, but even that didn't do me any good. I don't believe I could have recovered from the attack had it not been for Abbott Bros.' Rheumatic Remedy. It eased the pains like magic, cured my rheumatism, and that was the end of it. I have been a well man for the past ten years. This proves that Abbott Bros.' Rheumatic Remedy drove the rheumatism out of my system, root and branch. It has also cured a great many others here, including my sister. She had been helpless a long time, and her limbs were drawn out of shape by the terrible disease." "Mr. H. L. Strenning, 5535 Gladys Ave., Chicago, Ill., writes: I was afflicted with rheumatism and a serious kidney trouble. The rheumatism started with occasional pains in my shoulders and back. It gradually spread all over my body, and then my kidneys got in bad shape. I tried many kidney medicines and doctor after doctor, but got worse. I suffered nameless torture for ten years and was told my case was hopelessly incurable. I became almost helpless, and when my doctor said I had Bright's Disease and couldn't be cured, I gave up in despair. Finally a friend told me about Abbott Bros.' Rheumatic Remedy and got me to try it. It soon eased the horrible pain and helped my kidneys wonderfully. Now my kidneys are in fine condition and my rheumatism is gone. Abbott Bros.' Rheumatic Remedy did the work. I am a living advertisement for this godsend to suffering humanity. I would advise every man, woman and child to take Abbott Bros.' Rheumatic Remedy if they want to be cured of rheumatism or kidney misery."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

Alcohol (per cent)	23.2
Potassium iodid (grains per fluid dram)	5.0

Essentially a hydroalcoholic solution of potassium iodid and extracts of drugs such as sarsaparilla and taraxacum.

Misbranding of the article was alleged in the information for the reason that the following statements regarding the therapeutic or curative effects thereof appearing on the label aforesaid, to wit (on carton), "Abbott Bros. Rheumatic Remedy * * * For Rheumatism of every form and Stage, including Inflammatory, * * * Sciatica * * * Acute, * * * and all Uric Acid Diathesis." (On label) "Abbott Brothers Rheumatic Remedy * * * for all Uric Acid Troubles * * * Eczema, * * * Sciatica, * * * Inflammatory, * * * Acute, * * * and all other forms of Rheumatism,"

and included in the booklet aforesaid, to wit, "Abbott Bros. Rheumatic Remedy * * * For * * * all manifestations of Uric Acid Diathesis * * *. Abbott Bros.' Rheumatic Remedy * * * cured me of Sciatica * * * gonorrheal rheumatism * * * Hot Springs could not cure me, but Abbott Bros.' Rheumatic Remedy did it for me. * * * Death of Child averted. * * * acute inflammatory rheumatism * * * I believe she would have died but for Abbott Bros.' Rheumatic Remedy. * * * she was entirely cured. * * * Abbott Bros.' Rheumatic Remedy * * * cured * * * Rheumatoid Arthritis. * * * Inflammatory rheumatism * * * Abbott Bros.' Rheumatic Remedy. It eased the pains like magic, cured my rheumatism, and that was the end of it. * * * Doctor said I had Bright's Disease and couldn't be cured, * * * Abbott Bros.' Rheumatic Remedy * * * soon eased the horrible pain and helped my kidneys wonderfully. Now my kidneys are in fine condition * * *," were false and fraudulent in that the same were applied to the article knowingly and in reckless and wanton disregard of their truth or falsity, so as to represent falsely and fraudulently to the purchasers thereof and create in the minds of purchasers thereof the impression and belief that it was, in whole or in part, composed of or contained ingredients or medicinal agents effective, among other things, as a remedy for rheumatism of every form and stage, for inflammatory rheumatism, for sciatica, for acute rheumatism, for all uric-acid diathesis, for all uric-acid troubles, and for eczema, and as a cure for sciatica, gonorrheal rheumatism, acute inflammatory rheumatism, rheumatoid arthritis, inflammatory rheumatism, and Bright's disease, when, in truth and in fact, it was not, in whole or in part, composed of and did not contain such ingredients or medicinal agents.

On March 1, 1916, the case having come on for trial before the court and a jury, after the submission of evidence and arguments by counsel, the following charge was delivered to the jury on March 4, 1916, by the court (Anderson, *D. J.*):

Gentlemen of the jury, this is a criminal case, and in this case you are the judges of the evidence, the weight of the evidence, and the credibility of the witnesses. It is your exclusive province to determine what the facts are, but you are bound by the law as it is given to you by the court. During the course of the trial defendants' counsel objected to some statements made by the court in colloquy between court and counsel, or in ruling upon some evidence as to questions of fact. You will understand, gentlemen of the jury, that you are not bound by any statement that the court may make as to the facts in this case, but, as I have stated, you are the exclusive judges of the facts. If in the course of these instructions the court should make any statement of fact, that statement is not made, will not be made for the purpose of binding your judgments, controlling your minds, but only for the purpose of assisting and aiding you in coming to a correct conclusion upon the facts.

Now, Congress has forbidden the transportation of drugs in interstate commerce which are misbranded, and it is defined in the law which prohibits transportation, what that misbranding shall consist in. If a person transports in interstate commerce an article which is misbranded, as I shall define to you, the law says he or, in this case it, the defendant in this case being a corporation, shall be guilty of a misdemeanor and shall be fined not to exceed $200. Now, this statute says that it shall be an offense, a misdemeanor, to ship in interstate commerce any drug which is misbranded, it says for the purpose of this act an article shall be deemed to be misbranded in case of drugs if its package or label shall bear or contain any statement, design, or device regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein, which is false and fraudulent. The word "therapeutic" means specifically the same as the word "curative." "Therapeutic" means pertaining to the healing or curative therein. You will understand it best in determining the questions here, the word "therapeutic" practically means the same as "curative." This statement, as you will see in order to subject the defendant to a successful prosecution, should be false and fraudulent. The false statement needs no definition. A false statement is a statement

which is not true. A fraudulent statement is a statement which is not true and which is made for the purpose of misleading some one—made for the purpose of gaining some advantage. Now, in this case the charge is made by an information by the district attorney; it is in one count. It charges that the defendant, a corporation, did on a certain day in November, 1913, I believe—January, 1913—the defendant shipped in interstate commerce 12 dozen, I believe it was, of bottles of a certain article, describing it. It sets forth that on the label and within the package in which this article was packed there were certain statements made with regard to the curative and therapeutic effects of this so-called medicine. It is not necessary for me to read to you this information, as you will be allowed to take it with you to the jury room and can read it there, nor is it necessary for me now to read over to you the statements which are relied upon by the Government to make up this case—they are contained in the information and are upon the cartons and the bottle, which will go out with you if you desire, and you can then see just what they are.

Now, this information proceeds after setting out the fact that this shipment was made and that the carton and bottle, or the package contained in it, and the bottle contained on it certain labels, certain statements in the label and in the package avers that these statements were false and misleading, in this false and fraudulent in this that the same were applied to said article knowingly and in reckless and in wanton disregard of truth or falsity so as to represent falsely and fraudulently to the purchasers thereof and create in the minds of purchasers thereof an impression and belief that it was in whole or in part composed of or contained ingredients or medicinal agents effective among other things as a remedy for rheumatism of every form and stage, and effective as a remedy for inflammatory rheumatism and effective as a remedy for sciatica, and effective as a remedy for acute rheumatism, and effective as a remedy for all uric-acid diathesis, and effective as a remedy for all uric-acid troubles, and effective as a remedy for eczema, when, in truth and in fact, said article was not, in whole or in part, composed of, and did not contain, ingredients or medicinal agents effective, among other things, as a remedy for rheumatism of every form or stage; or effective as a remedy for inflammatory rheumatism; or effective as a remedy for sciatica; or effective as a remedy for acute rheumatism; or effective as a remedy for all uric-acid diathesis; or effective as a remedy for all uric-acid troubles; or effective as a remedy for eczema.

Now, to these things there has been entered a plea of not guilty, and that makes the issue which you are to try; and upon that issue before the Government can ask a verdict at your hands it must establish all the material averments of the information beyond all reasonable doubt. There has been filed in this case a stipulation which relieves you of determining some of the facts put in issue by this plea. It has been admitted here before you that the shipment was made as averred of the articles as averred in interstate commerce at the time and in the place averred in the information so that with that stipulation in the record it leaves for you to determine simply these two questions:

1. Was there any statement within this package, or upon the label attached to this article, which was false; and

2. Was that statement, was such statement, if false, fraudulent?

If you find that the statement was false and fraudulent both, then your verdict should, of course, be guilty. If you should find that the statement was not false, then you need go no further, because it must be false and fraudulent. If you determine that the statement or any statement within this package or on this label is false, then you will proceed to consider whether or not it was fraudulent.

Now, you will notice that the statute does not require or provide that in order to make a defendant amenable to its provisions that every statement made in the label or in its packing, that its package or on the label shall be false or fraudulent, if its package or label shall bear or contain any statement regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein, which is false and fraudulent, it shall be misbranded within the meaning of this act.

So you will proceed to determine, gentlemen of the jury, first, whether or not the statements which are on the label and contained in the packages which were shipped, as the stipulation shows, were false, and if you determine that they were false, then you will proceed to determine whether they were fraudulently named; that is, made for the purpose of gaining some advantage, monetary or otherwise—in this case, of course, money.

In a criminal case a defendant is presumed to be innocent until he is proven guilty beyond all reasonable doubt, and this presumption of innocence remains with him throughout the trial; with it throughout the trial in this case, and before the Government can ask the jury to return a verdict of guilty, it must remove that reasonable doubt and overcome that presumption of innocence by proof beyond a reasonable doubt. A reasonable doubt, gentlemen of the jury, is what the term implies. It means a doubt for which a reason can be given. It is not a speculative or captious doubt, it is not a doubt conjured up by your own ingenuity or by the ingenuity of counsel, but it is a reasonable, substantial misgiving generated by the evidence or the want of it. As I have said, you are the judges of the evidence, the weight of the evidence, and the credibility of the witnesses. In determining what weight you shall give to the testimony of any witness you should take into consideration his manner, bearing upon the witness stand, his knowledge or want of knowledge of the things about which he testifies, his intelligence or his want of intelligence, and his interest or his want of interest in the result of the suit. Many of the witnesses who have testified here are what are known in law as expert witnesses—because all men can not know about all things, and because some men by studied examination learn about things which the average man does not know, it is permissible for persons who are schooled in certain matters and branches of learning to state their conclusions and express their opinions for the guidance and assistance of juries in investigations of fact. Expert evidence is often spoken of as opinion evidence, and it is opinion evidence. When a man has devoted years of study to a science or a branch of learning, and has become proficient in that branch, it is of assistance to juries and to average men to have their opinions upon certain questions of fact about which the witness is informed and about which the jurors ordinarily are not informed. Now, when you come to determine what weight you will give to the testimony of an expert witness, you will apply the same rules that you will apply to any other witness so far as they are applicable. In other words, you will inquire what interest, if any, the witness has in testifying in the case, what his knowledge or opportunities are for knowing the things about which he testifies, what his opportunities and qualifications are for expressing the things which he is allowed to express upon the witness stand, and when you come to consider the testimony of what are not properly considered expert witnesses, but non-expert witnesses and average men. The man who follows his trade of blacksmith, barber, or farmer, or lawyer, for that matter, when it comes to medicine and he states upon the witness stand that he had a certain disease and that he took a certain remedy, and that it cured him, in determining what weight you will give to his testimony you will consider what knowledge he has upon the subject, what he knows, what particular investigation or experience—investigation he has made or experience he has had which will enable him to say to you that he had a particular disease or what he knows about medicine or the curative effects of medicine whereby he can state to you that a certain thing that he took effected a certain remedy; and when you are to determine whether or not this medicine will or will not do things which are claimed for it, and you are weighing the testimony on the one side of experienced and learned men who have given their lives to the study of this question, giving consideration to their testimony in determining what weight you will give to it when you come to considering it to the testimony of witnesses who have never studied such subjects and have had no opportunity to become acquainted with such subjects, you will then decide what weight you will give to the opinions which they express as to what afflictions they were suffering from and as to what effect, if any, the medicine which they took had upon those afflictions.

You will also understand, gentlemen of the jury, in our system of jurisprudence the unsworn testimony—statement of a third party—is no evidence, and you will not give weight to the statements made by many witnesses upon the stand, that Dr. So-and-so said he had rheumatism. Dr. So-and-so is not here upon the witness stand, and that is the unsworn statement of a third party and is hearsay evidence and is not regarded as of weight in a court like this.

Now, you will take this case, gentlemen of the jury, weigh the evidence in the light of the instructions which I have given to you. If you after having considered this evidence, weighed and compared it in the light of the instructions which I have given to you, have a reasonable doubt as to the guilt of this defendant, it is your duty to return a verdict of not guilty. But, if upon full consideration you determine that the Government has established

the averments of the information beyond a reasonable doubt as defined to you, it is your duty to return a verdict of guilty. A good deal of evidence has been allowed to go before you upon the question of good faith—ordinarily what somebody said to the defendant or what the defendant said to somebody else is not evidence, but where there comes a question in the case as to whether or not a defendant, and in this case the defendant's officers have acted in good faith, then the information that has come to him, whether it be reliable or not and which he claims to have acted upon becomes pertinent for the jury to consider. Now, the president of this defendant has taken the witness stand and testified as to the various persons who have told him that they have taken his medicines and of the curative effects it has had, and that evidence has been allowed to go to you, that bearing upon the question whether he honestly believed that this medicine could do the things which are claimed for it. In determining, gentlemen of the jury, the question of the good faith of the defendants you will take into consideration the fact that the president of this organization, the only officer who has appeared here and testified here for it, who himself says he originated the manufacture of this thing and has superintended it throughout the course of this business—he himself says that he is neither a physician nor a chemist, that he has never studied medicine nor the practice of it, that he has never studied chemistry nor the science of chemistry, and when you are asked to find that he acted in good faith in selling to persons who supposed themselves to be afflicted with certain diseases, this so-called remedy, you will take into consideration the fact that he himself admits that he is neither a physician nor a chemist, and bear those things in mind, as well as the other circumstances in the case, determine whether or not if you find that these statements were not true they were made either knowing them to be untrue or with such a reckless disregard of the truth as to amount to fraud. You will have nothing to do with the punishment in this case if you find the defendant guilty. If you find the defendant guilty the duty of inflicting the punishment which can not be anything but a fine not to exceed $200, is imposed upon the court. You have nothing to do except to determine the simple question whether or not the defendant is or is not guilty. Forms of verdict will be provided to you. If you find that the defendant is guilty the form of your verdict will be: We, the jury, find the defendant guilty as charged. If you find the defendant not guilty the form of your verdict will be: We, the jury, find the defendant not guilty as charged in the information. The verdict is signed by all the jurors.

THE COURT. Any suggestion?

Mr. ANDERSON. If your honor please, I do not think the fact as to what constitutes fraud was brought out sufficiently. The court instructed the jury as I understood it, that fraud is where the proposition was false and was put out to mislead the public.

The COURT. Knowingly; I intended to use that word.

Mr. ANDERSON. And, further, the proposition as the charge now stands, I believe that the jury are instructed to disregarded all statements as to what physicians may have told the witnesses, although they told that to Mr. Abbott, I think.

THE COURT. Except as bearing upon the question of good faith.

Mr. DICKINSON. Your honor, in stating the charge made no reference to statement in the pamphlet.

THE COURT. I said statement on the label; the charge is specific. It is so understood, gentlemen of the jury, the statement in the package or on the label are to be considered by you statements in the package as well as on the label.

You have no exceptions?

Mr. ANDERSON. None further than I have stated and which you corrected.

The jury thereupon retired, and, after due deliberation, returned into court with a verdict of guilty, and the court imposed a fine of $200 and costs.

CARL VROOMAN,
Acting Secretary of Agriculture.

4843. Adulteration and misbranding of sirup. U. S. v. 55 Cases or Boxes of sirup. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 6194. I. S. No. 1429–k. S. No. E–184.)

On December 21, 1914, the United States attorney for the Northern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel, and on December 30, 1914, an amended libel, praying the seizure for condemnation of 55 cases or boxes, 20 of which each contained 12 packages of sirup, and 35 of which each contained 12 bottles of sirup, remaining unsold in the original unbroken packages at Albany, N. Y., alleging that the article had been shipped on or about October 2, 1914, by Goulding Bros., Whitman, Mass., and transported from the State of Massachusetts into the State of New York, and charging adulteration and misbranding in violation of the Food and Drugs Act. The 20 cases and the packages therein were labeled: "Appetone Brand Blended Fancy Syrup, 75 per cent cane sugar, 25 per cent maple. Prepared by Goulding Bros., Whitman, Mass. Contents 7 fluid ozs." The bottles in the 35 cases were labeled as above and the cases or boxes containing the same were labeled: "1 dozen large round Appetone Brand Syrup, Goulding Bros., Whitman, Mass."

Adulteration of the article was alleged in the amended libel for the reason that it consisted in whole or in part of cane sugar or sirup and contained little or no maple sugar or sirup.

Misbranding was alleged for the reason that the article was contained in packages and bottles, to each of which was attached a paper label as aforesaid, which said words were false and untrue in that the sirup was so composed; with the intent on the part of the shippers aforesaid to deceive and mislead the purchasers thereof in that, while said labels and the words thereon contained represented and were intended to represent that the article was a fancy blended brand of maple sirup [a blended fancy sirup containing cane sugar and maple], when in truth and in fact it was not, but was composed of cane sugar or sirup.

On March 16, 1916, and May 24, 1916, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN,
Acting Secretary of Agriculture.

4844. Adulteration and misbranding of pepper. U. S. v. The C. F. Blanke Tea and Coffee Co., a corporation. Plea of guilty. Fine, $80 and costs. (F. & D. No. 6202. I. S. Nos. 12762–k, 14201–k, 15210–k, 15214–k.)

On March 6, 1916, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the C. F. Blanke Tea & Coffee Co., a corporation, St. Louis, Mo., alleging shipment by said company, in violation of the Food and Drugs Act, on or about March 4, 1915, from the State of Missouri into the State of Oklahoma, on or about March 8, 1915, from the State of Missouri into the State of Mississippi, and on or about March 11, 1915, and May 1, 1915, from the State of Missouri into the State of Illinois, of four different consignments of pepper which, in each shipment, was adulterated and misbranded.

The article shipped March 4, 1915, and March 8, 1915, was labeled: (On package) "Blanke's Strictly Pure Spices Black Pepper 1¼ Ounces Net Weight C. F. Blanke Tea & Coffee Co. Blanke's Strictly Pure Spices The Spice in this package is ground of well selected stock and is guaranteed to be strictly pure by C. F. Blanke Tea & Coffee Co. St. Louis."

Analysis of samples of this article by the Bureau of Chemistry of this department showed, respectively, the following results:

Shipment 1.

Total ash (per cent)	10.52
Acid insoluble ash (chiefly sand and clay) (per cent)	5.20

Shipment 2.

Total ash (per cent)	9.17
Acid insoluble ash (chiefly sand and clay) (per cent)	4.27

These results show that the pepper contained an excessive amount of sand and clay.

The article shipped March 11, 1915, and May 1, 1915, was labeled: (On carton) "1¼ Ounces net Weight Blanke's Exposition Brand High Grade Black Pepper Pure Ground C. F. Blanke Tea & Coffee Co. St. Louis, Mo. The Spice in this Package is carefully ground of the very best high grade spice, carefully selected for their pungency and flavor. They are the height of excellency and can not be improved upon Strictly Pure and Wholesome. 1¼ Ounces Net Weight. Blanke's Exposition Brand High Grade Black Pepper Pure Ground C. F. Blanke Tea & Coffee Co. St. Louis, Mo. After once Trying a Package of this Spice you will readily see the difference between this Spice and the ordinary spices usually handled as pure goods.—We give no prizes or schemes with this Spice, but give full value for your money in Pure Unadulterated Wholesome Spice. Insist on getting Blankes Exposition Brand High Grade Spices They are the best Blankes Exposition Brand High Grade Spices are the very best."

Analysis of samples from these shipments, by said Bureau of Chemistry, showed the following results:

Shipment 1.

Total ash (per cent)	8.27
Acid insoluble ash (chiefly sand and clay) (per cent)	3.24

Shipment 2.

Total ash (per cent)---------- 9.37
Acid insoluble ash (chiefly sand and clay) (per cent)------ 4.29

These results show that the pepper contained an excessive amount of sand and clay.

Adulteration of the article in all four shipments was alleged in the information for the reason that certain substances, to wit, sand and clay, had been mixed and packed with the article so as to reduce, lower, and injuriously affect its quality and strength.

Misbranding of the article in the first two shipments was alleged for the reason that the following statements regarding it, and the ingredients and substances contained therein, appearing on the label aforesaid, to wit, "Strictly Pure Spices," "The spice in this package is ground of well-selected stock and is guaranteed to be strictly pure," and "Black Pepper," were false and misleading, in that they indicated to purchasers thereof that the article was strictly pure black pepper, and for the further reason that the article was labeled as aforesaid so as to deceive and mislead purchasers into the belief that it was strictly pure black pepper, when, in truth and in fact, it was not, but was, to wit, black pepper containing excessive amounts of sand and clay.

Misbranding of the article in the last two shipments was alleged for the reason that the following statements regarding it and the ingredients and substances contained therein, appearing on the label aforesaid, to wit, "High Grade Black Pepper" and "The Spice in this package is carefully ground of the very best high grade spice, carefully selected for their pungency and flavor. They are the height of excellency and can not be improved upon. Strictly Pure and Wholesome," were false and misleading, in that they indicated to purchasers thereof that the article was strictly pure black pepper, and for the further reason that the article was labeled as aforesaid so as to deceive and mislead purchasers into the belief that it was strictly pure black pepper, when, in truth and in fact, it was not, but was, to wit, black pepper containing excessive amounts of sand and clay.

On May 4, 1916, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $80 and costs.

CARL VROOMAN,
Acting Secretary of Agriculture.

4845. Misbranding of Wingold Brand Stomach Bitters. U. S. v. Arrow Distilleries Co., a corporation. Plea of guilty. Fine, $100 and costs. (F. & D. No. 6221. I. S. No. 4214–h.)

On July 19, 1915, the United States attorney for the Southern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Arrow Distilleries Co., a corporation, Peoria, Ill., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about April 1, 1913, from the State of Illinois into the State of Michigan, of a quantity of Wingold Brand Stomach Bitters, which was misbranded. The article was labeled: (On bottle—front) "Wingold Brand Stomach Bitters At Last The Best. Prepared from Roots and Herbs by The Arrow Distilleries Co. Peoria, Illinois. Alcohol 20% or 40 Proof For Lowenstein Co., Menominee, Mich." (Back) "Important Information Science has established the fact that the Ingredients of which this tonic is compounded have been used as household remedies by most nations of the world from time immemorial. They are quoted in Materia Medica, as a relief for Biliousness, Malaria, Fever and Ague, Liver and Kidney Troubles, Dyspepsia, Constipation, Nervousness, General Debility and all stomach and Urinary Disorders, consequently a great Blood Purifier. It will assist Nature and relieve all ailments human flesh is heir to." (Blown in bottle) "A B Co." (On wooden shipping case) "Wingold Brand Stomach Bitters At Last The Best."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Alcohol (per cent by volume)	27.1
Nonvolatile material (grams per 100 cc)	9.5
Ash (grams per 100 cc)	0.21
Sugar, as invert (grams per 100 cc)	5.86

Emodin bearing drug: Present.

Slightly acid liquid of pleasant ethereal odor, and bitter taste.

Misbranding of the article was alleged in the information for the reason that the following statement, appearing on the label thereof, to wit, "Alcohol 20%," was false and misleading, in that it indicated to the purchasers thereof that the article contained 20 per cent of alcohol, when, in truth and in fact, it contained a greater amount of alcohol, to wit, 27.1 per cent. Misbranding was alleged for the further reason that the following statements regarding the therapeutic or curative effects of the article, appearing on the label aforesaid, to wit, "Wingold Brand Stomach Bitters * * * Science has established the fact that the ingredients of which this tonic is compounded have been used as household remedies by most nations of the world from time immemorial." "They are quoted in Materia Medica as a relief for * * * Malaria * * * and all Stomach and Urinary Disorders * * *" "It will * * * relieve all ailments human flesh is heir to," were false and fraudulent, in that the same were applied to the article knowingly, and in reckless and wanton disregard of their truth or falsity, so as to represent falsely and fraudulently to the purchasers thereof, and create in the minds of purchasers thereof the impression and belief, that it was, in whole or in part, composed of, or contained, ingredients or medicinal agents effective, among other things, for the relief of malaria and all stomach and urinary disorders, and all ailments human flesh is heir to, when, in truth and in fact, it was not, in whole or in part, composed of and did not contain such ingredients or medicinal agents.

On April 18, 1916, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $100 and costs.

CARL VROOMAN,
Acting Secretary of Agriculture.

4846. Misbranding of Dr. J. L. Kellett's Oil of Eden No. 1 and Dr. J. L. Kellett's Sweet Spirits of Eden. U. S. v. John L. Kellett (California's Cooperative Medicine Co.). Tried to the court and a jury. Verdict of guilty. Fine, $600. (F. & D. No. 6225. I. S. No. 9722-h, 9723-h.)

At the November, 1915, term of the District Court of the United States for the District of Utah, the United States attorney for said district, acting upon a report by the Secretary of Agriculture, filed in said court an information against John L. Kellett, trading as California's Cooperative Medicine Co., Salt Lake City, Utah, alleging shipment by said defendant, in violation of the Food and Drugs Act, as amended, on or about April 13, 1914, from the State of Utah into the State of California, of quantities of Dr. J. L. Kellett's Oil of Eden No. 1 and Dr. J. L. Kellett's Sweet Spirits of Eden which were misbranded. The first-named article was labeled: (On bottle) "Dr. J. L. Kellett's Oil of Eden No. 1. Each fluid ounce contains alcohol, 50 per cent; opium, 54½ grains; morphine sulphate, 2½ grains. Direction; Rheumatic and neuralgic pains in shoulders, breast, sides, back, hips, and limbs, apply every 12 hours; frontal neuralgia, apply on temples; earache, apply under ears; sore throat, apply on throat; enlarged glands, ulcerated tumors, apply until drawn to a head; sore eyes, apply on the temples, under the ears, and on eyelids. Don't get it in your eyes or on tender parts. It causes pain, and parts may swell, but will not do any permanent injury. Shake well and apply with finger. Poison. Use externally only." (On carton, front:) "Dr. John L. Kellett's No. 1 Oil of Eden. Each fluid ounce contains alcohol, 50%; opium, 54½ grains; morphine sulphate, 2½ gr. Manufactured and guaranteed by C. C. Medical Co. under the Food and Drugs Act, June 30, 1906. Serial No. 10698. Utah Branch, Salt Lake City. Dr. John L. Kellett, president and manager." (Back:) "Dr. John L. Kellett's No. 1 Oil of Eden relaxes and opens the pores. Penetrates to the bone, dissolves and removes to the surface all impurities of the external system from which pain and disease are created. In conjunction with Sweet Spirits of Eden, all ordinary complaints of rheumatic nature are easily cured. Oil of Eden dissolves and removes Ulcerated Tumors, Enlarged Glands, and all other Eruptions. For man or beast it is all the same. It is a powerful medicine and is applied with the Fingers. Used Externally Only. Poison Price $2.00. (One side) Oil of Eden (other side) Oil of Eden"

The circulars or pamphlets accompanying this article contained, among other things, the following: "For the cure of Rheumatism, Neuralgia, Lumbago, Gout, and all kindred pains, shake the bottle well every time; you wet your finger and apply with finger on surface over the pain. Do not think because a little is good that more is better, for it is not the case with Oil of Eden. Apply every twelve hours, unless it gets too sore, then apply as often as you can until you are well." "* * * If the eyelids are inflamed or granulated, the Oil of Eden will cut loose all contraction and granulation, which cause severe pain, yet it will not do any permanent injury." "* * * Deafness that is caused by disease has been cured by Oil of Eden by applying it under the ear." "When Oil of Eden and Sweet Spirits of Eden are used in conjunction with each other, a cure is certain of rheumatism as well as all kindred curable ailments, but it will take time in chronic cases, as impure parts have to be worked out and replaced with healthy ones, which takes time." "I will pay a reward of $500.00 for proof that I have ever failed or will fail in removing and curing without a knife, a goitre, enlarged gland, ulcerated tumor or any false, corrupt, impure deposit of the external system, with Oil of Eden, used in connection with Sweet Spirits of Eden, which cures chronic constipation, disordered digestion, sick bilious headache and nervous prostration."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the Oil of Eden to consist of two layers, the upper layer oily, carrying a vesicating agent and a bland saponifiable fixed oil; the lower layer hydroalcoholic, carrying opium alkaloids and extractives.

Misbranding of the article was alleged in the information for the reason that the following statements regarding the therapeutic or curative effects thereof, appearing on the carton label aforesaid, to wit, "In conjunction with Sweet Spirits of Eden, all ordinary complaints of a rheumatic nature are easily cured. Oil of Eden dissolves and removes ulcerated tumors, enlarged glands, and all other eruptions," and included in the circulars or pamphlets aforesaid, to wit, "For the cure of rheumatism * * * Gout * * * Do not think because a little is good more is better, for it is not the case with Oil of Eden." "* * * If the eyelids are inflamed or granulated, the Oil of Eden will cut loose all contraction and granulation. * * *" "* * * Deafness that is caused by disease has been cured by Oil of Eden by applying it under the ear." "When Oil of Eden and Sweet Spirits of Eden are used in conjunction with each other, a cure is certain of rheumatism. * * *" "I will pay a reward of $500 for proof that I have ever failed or will fail in removing and curing without a knife, a goitre, * * * with Oil of Eden used in connection with Sweet Spirits of Eden, * * *" were false and fraudulent in that the same were applied to the article knowingly and in reckless and wanton disregard of their truth or falsity, so as to represent falsely and fraudulently to the purchasers thereof, and create in the minds of purchasers thereof the impression and belief, that it was, in whole or in part, composed of, or contained, ingredients or medicinal agents effective, among other things, for curing all ordinary complaints of a rheumatic nature when used in conjunction with Sweet Spirits of Eden, for dissolving and removing ulcerated tumors, enlarged glands, and all other eruptions, for the cure of rheumatism and gout, in the treatment of granulated eyelids, for curing deafness, as a cure for rheumatism and goitre, when used in conjunction with Sweet Spirits of Eden, when, in truth and in fact, it was not, in whole or in part, composed of, and did not contain, ingredients or medicinal agents effective, among other things, for curing all ordinary complaints of a rheumatic nature when used in conjunction with Sweet Spirits of Eden, or when used in any other manner, or for dissolving or removing ulcerated tumors, enlarged glands, or all other eruptions, for the cure of rheumatism or gout, in the treatment of granulated eyelids, for curing deafness, or, when used in conjunction with Sweet Spirits of Eden or when used in any other manner, as a cure for rheumatism or goitre.

The second-named article was labeled: (On bottle) "Dr. J. L. Kellett's Sweet Spirits of Eden Alcohol 25 per cent Directions In breaking up the seed of disease in chronic cases there will be an undesired and sickening feeling, which is a good indication, as it is harmless. An average dose in constipation and disordered digestion is 10 drops, 2, 3, and 4 times a day before meals and at bed time in plenty of water. For sick or bilious headaches and weak kidneys take less, as it strains the nerves in place of strengthening them when over doses are taken. Children half quantity. Carefully follow directions." (On carton, front) "Dr. John L. Kellett's Sweet Spirits of Eden Contains Alcohol Spirits about 25% Manufactured and Guaranteed by C. C. Medical Co. Under the Food and Drugs Act, June 30, 1906. Serial No. 10698. Utah Branch Salt Lake City. Dr. John L. Kellett, President and Manager. (Back) Dr. Jno. L. Kellett's Sweet Spirits of Eden Strengthens the mental power of the nerves that govern the whole system, regulating the Liver, Kidneys, Stomach and Bowels, and purifies the blood, curing Chronic Constipation, Sick and Bilious Headaches, Weak and Deranged Nerves and Nervous Prostration, and

will restore Lost Vitality caused by sickness and overtaxation. One bottle will assist nature in curing most any one case, as it is used by drops in the place of spoonfuls. Price $3.00 (One side) Sweet Spirits of Eden (Other side) Sweet Spirits of Eden" The circular or pamphlet accompanying this article contained, among other things, the following: "When Oil of Eden and Sweet Spirits of Eden are used in conjunction with each other, a cure is certain of rheumatism as well as all kindred curable ailments, but it will take time in chronic cases, as impure parts have to be worked out and replaced with healthy ones, which takes time." "I will pay a reward of $500.00 for proof that I have ever failed or will fail in removing and curing without a knife a goitre, enlarged gland, ulcerated tumor or any false, corrupt, impure deposit of the external system, with Oil of Eden, used in connection with Sweet Spirits of Eden, which cures chronic constipation, disordered digestion, sick bilious headaches and nervous prostration."

Analysis of a sample of this article by the said Bureau of Chemistry showed the Sweet Spirits of Eden to consist of 50.48 per cent by volume of alcohol, 30.42 grams per 100 cc of solids, largely glycerin, 0.3 grams per 100 cc of ash, and containing quinine, reducing sugars, and a trace of resins.

Misbranding of the article was alleged in the information for the reason that the following statement appearing on the labels aforesaid, to wit, "Alcohol 25 per cent," was false and misleading in that it indicated to the purchasers thereof that the article of drugs contained 25 per cent of alcohol by volume, when, in truth and in fact, it contained a greater amount of alcohol, to wit, 50.48 per cent. Misbranding was alleged for the further reason that the following statements regarding the therapeutic or curative effects of the article appearing on the carton aforesaid, to wit: "Dr. John L. Kellett's Sweet Spirits of Eden * * * Strengthens the mental power of the nerves that govern the whole system, * * * curing * * * Nervous Prostration * * *," and included in the circular or pamphlet aforesaid, to wit, "When Oil of Eden and Sweet Spirits of Eden are used in conjunction with each other a cure is certain of rheumatism * * *," "I will pay a reward of $500.00 for proof that I have ever failed or will fail in removing and curing without a knife a goitre * * * with Oil of Eden, used in conjunction with Sweet Spirits of Eden * * *," were false and fraudulent in that the same were applied to the article knowingly and in reckless and wanton disregard of their truth or falsity, so as to represent falsely and fraudulently to the purchasers thereof and create in the minds of purchasers thereof the impression and belief that it was in whole or in part composed of or contained ingredients or medicinal agents effective, among other things, for curing nervous prostration, and as a cure for rheumatism and goiter when used in conjunction with Oil of Eden, when in truth and in fact it was not in whole or in part composed of and did not contain ingredients or medicinal agents effective for curing nervous prostration or as a cure for rheumatism or goiter when used in conjunction with Oil of Eden or when used in any other manner.

On January 20, 1916, the case having come on for trial before the court and a jury, after the submission of evidence and arguments by counsel, the following charge was delivered to the jury by the court (Johnson, *D. J.*):

Gentlemen of the jury, the defendant, John L. Kellett, is charged by the United States Government in this case on three counts with the violation of what is commonly known as the Food and Drugs Act.

Each count of the information charges that the defendant, John L. Kellett, trading as California's Cooperative Medicine Company, of Salt Lake City, Utah, did within the Judicial District of Utah, and within the jurisdiction of this court, on or about the 13th day of April, 1914, then and there, in violation of the act of Congress of June 30, 1906, known as the Food and Drugs Act, as

amended by the act of August 23, 1913, unlawfully ship and deliver for shipment from Salt Lake City, State of Utah, to the City of San Francisco, State of California, consigned to H. C. Moore, certain packages, to wit, six bottles, inclosed in cartons, and containing an article designed and intended to be used in the cure, prevention, and mitigation of diseases of man.

The Food and Drugs Act, gentlemen, makes it unlawful for any person to ship or deliver for shipment from any State into any other State, any drugs misbranded within the meaning of the act, such shipment being made with the intent upon the part of the shipper that such misbranded drug shall be used by the consignee, or any other person.

In this connection, gentlemen, I instruct you that the preparations, Oil of Eden and Sweet Spirits of Eden, introduced in evidence as exhibits, are drugs within the meaning of this act.

Before you can convict the defendant on any of the counts of the information, you must be convinced by the evidence in the case beyond a reasonable doubt that the defendant, on or about the date alleged in the information, shipped or caused to be shipped from the State of Utah—from any point within the central division of the judicial district of Utah—into the State of California, the preparations, Oil of Eden and Sweet Spirits of Eden, exhibits of which are in evidence in this case, and that the defendant in making or causing to be made said shipment intended that said preparations, or either of them, should be used by the witness Moore, or by some other person, as a remedy for some one or more of the ailments mentioned on the labels, cartons, or in the literature accompanying the shipment.

In this connection I charge you that in order that the defendant be liable under the act as the shipper of these preparations, it is not necessary that he should have been the owner of them, or either of them, or that he shipped them for his own profit; he would be equally liable as shipper under this act if he, as an officer, agent, or manager of any company or corporation, made the shipment or caused the same to be made for the purpose aforesaid.

Under the head of "misbranded" the act provides that for the purposes of this act an article shall be deemed to be misbranded, in case of drugs, if its package or label shall bear or contain any statement regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein, which is false and fraudulent.

(The court here reviewed the various charges in the information.)

The labels, cartons and circulars are in evidence as exhibits, and you are at liberty to take them with you to the jury room for your information in determining your verdict.

In addition to the instructions already given you with respect to the shipment by the defendant, if you so find, I charge you with respect to the first and third counts of the information, that, as appears from the information as read to you, the charges are that there were statements on the labels, cartons, and in the circulars in the packages containing these preparations which were false and fraudulent with regard to their curative or therapeutic effects. So that it is not sufficient for the Government to prove merely that the statements were false, but the Government must also prove beyond a reasonable doubt that they were fraudulent. If you, gentlemen of the jury, are satisfied beyond a reasonable doubt that the statements referred to and charged as false and fraudulent in the third count, are not only false, but that the defendant knew them to be false, or, not knowing whether they were true or false, yet in reckless and wanton disregard of their truth or falsity, and without any reasonable ground to believe that they were true, he stated them falsely and knowingly, or without knowledge of their truth or falsity, as I have explained to you, with the intent to deceive the witness Moore, or any other person who might use the preparations, then you will be justified in finding that the statements were false and fraudulent, and it would be your duty to return a verdict of guilty upon both of said counts, or either of them, as your finding may be with respect to the matters charged as false and fraudulent, in these counts, respectively. But if, on the other hand, you are not satisfied beyond a reasonable doubt that the statements were not only false but that they were also fraudulent, then it would be your duty to acquit the defendant upon both of said counts, or either of them, as your finding may be with respect to the matters charged as false and fraudulent in said counts, respectively.

The mere falsity of a statement would not be sufficient to justify you in convicting the defendant, unless you are satisfied beyond a reasonable doubt that in stating the falsity the defendant did it knowingly, or, without knowing,

did it in reckless and wanton disregard of the truth or falsity of the statement and without any reasonable ground to believe it to be true and with intent to deceive and defraud.

In order to convict the defendant it is not necessary that you find beyond a reasonable doubt that all of the statements charged by the Government to be false and fraudulent were in fact so. If you believe from the evidence beyond a reasonable doubt that any one statement charged as false and fraudulent, as I have before explained to you, is in fact so, then it would be your duty to find the defendant guilty upon the count in which such false and fraudulent statement is charged.

In respect to the second count of the information I charge you, gentlemen of the jury, that if you believe from the evidence beyond a reasonable doubt, and so find, that the label or carton or literature on or accompanying the Sweet Spirits of Eden contained a statement showing "alcohol 25 per cent," and you further find that the content of alcohol in the Sweet Spirits of Eden was different in quantity or volume in any substantial proportion and was false and misleading in that it indicated to the purchasers thereof that the said article of drug contained 25 per cent, and it in fact contained some other substantially different quantity or volume, then it would be your duty under the evidence, if you so find, to return a verdict of guilty upon this count.

In respect to the several counts, gentlemen of the jury, you have heard the evidence on the part of the Government; the packages, or at least some of them, with the labels thereon, the cartons, with the printed matter thereon, and the circulars which are charged to be false and fraudulent, have been offered in evidence and are before you. The Government has produced a witness who has analyzed the contents of the Sweet Spirits of Eden, and who has stated to you the result of his analysis and the percentage of alcohol. The Government has called physicians who have testified, as you have heard, that in their opinion the preparations, and the ingredients found in them, are not effective as a remedy for the disorders which it is stated they are effective for, and in respect to which it is charged by the Government that such statements are false and fraudulent, and who stated that in their opinion there are no substances or drugs that would be effective as remedies according to the statements made on the labels and in the pamphlets and on the cartons. On the other hand, the defendant has called witnesses to show, in the instances in which they have been treated, that the drug has been effective as a remedy for the disorders with which they stated they were afflicted. You will take all of this evidence into consideration and determine, first, whether or not the statements which are referred to by the Government with regard to the therapeutic or curative properties of these preparations are false; and you will also take into consideration the evidence in behalf of the Government of the expert physicians, as opposed to the evidence introduced in behalf of the defendant, and determine whether the statements were false. If they were false, then it will be necessary for you to go further and be satisfied beyond a reasonable doubt in your minds not only of their falsity but that the defendant when he made them knew them to be false or, not knowing, had no reasonable ground to believe them to be true, and that he put forth the statements in reckless and wanton disregard of their truth or falsity and intended by such false statements to deceive and defraud. If you are satisfied beyond a reasonable doubt that the statements as to the therapeutic or curative properties of the preparations were false and fraudulent with respect to all or any one of the diseases charged in the information, then it would be your duty to return a verdict of guilty. Upon the other hand, if you are not satisfied beyond a reasonable doubt that they were not [only] false, but fraudulent, and made with the intent to deceive and defraud the public, then it would be your duty to return a verdict of not guilty.

In the first instance, the presumption of innocence is in favor of the defendant, and it attends him throughout the trial, and the burden is upon the Government to overcome that presumption of innocence by proof which satisfies your minds beyond a reasonable doubt.

By reasonable doubt, gentlemen, is not meant all doubt. A reasonable doubt is one that arises upon a consideration of all of the evidence, and which addresses itself to your reason, such a doubt as would affect your action in matters of the highest importance to you.

You are required to decide this case, as every other criminal case, upon the strong probabilities of the case, and in order to warrant a conviction those

probabilities must be so strong as not to exclude all possible doubt or possibility of error, but to exclude all reasonable doubt.

You are the judges of the facts in this case and of the credibility of the witnesses, as well as the weight to be attached to their testimony. If you believe that any witness has willfully sworn falsely to a material fact in this case, you are at liberty, though not required, to disregard all the testimony of that witness, except where it is corroborated by other credible testimony. In considering the weight to be attached to the evidence of any witness, you should consider the interest, bias, or prejudices which any such witness may have in the result of the case, as affecting the credit to be given to his testimony. You should judge of that bias, prejudice, and interest of the witness from his manner in giving his testimony, his deportment on the stand, and in fact anything which strikes you from his manner of testifying that tends to show that he is swearing to an untruth or falsehood.

There will be submitted to you, gentlemen, a form of verdict in which a blank space will be left before the word "guilty," one applying to the first count, another to the second count, and another to the third count. If you shall find the defendant guilty upon any one or all of the counts, you shall sign the verdict as written; but if you find the defendant not guilty upon any one or all of the counts, write the word "not" before the word "guilty."

Mr. Cook. With respect to the second count, may it please the court, we wish the jury to be instructed with respect to the branding of the quantity of alcohol, that the intent of the defendant with respect to the marking of the percentage is immaterial; that the law is directed merely at the correctness of the statement, and that the defendant should be found guilty, without regard to the defendant's intent, if the statement is incorrect.

The Court. That instruction or request is granted, gentlemen of the jury. The matter of intent on the second count is immaterial—that is, the intent of the defendant.

Mr. Cook. With respect to the marking.

The Court. In respect to the matter concerning which that charge was given.

Mr. Cook. It is sufficient that the label, at the time of shipping, is incorrect.

The Court. That is the intention in the granting of your request.

The jury thereupon retired and after due deliberation returned into court with its verdict of guilty, and thereafter, on February 12, 1916, after the defendant's motion for a new trial had been denied, the court imposed a fine of $200 on each count of the information, making a total fine of $600.

Carl Vrooman,
Acting Secretary of Agriculture.

4847. Adulteration and misbranding of vinegar. U. S. v. 234 Barrels of Vinegar. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. No. 6311. I. S. Nos. 1188–k, 1190–k, 1191–k, 1192–k, 1193–k. S. No. E–223.)

During the week of March 8, 1915, the United States attorney for the District of Columbia, acting upon a report by the Secretary of Agriculture, filed in the Supreme Court of the District aforesaid, holding a district court, 97 libels for the seizure and condemnation of certain barrels of vinegar remaining unsold in the original unbroken packages at Washington, D. C., alleging that the same were being held and offered for sale in the city of Washington, D. C., and charging adulteration and misbranding in violation of the Food and Drugs Act. The article in each case was labeled: "Purity Vinegar Works, Cohocton, N. Y. Purity Brand Pure Apple Cider Vinegar, Geo. Naas & Son Co., Prop."

Adulteration of the article in each case was alleged in the libels for the reason that it had been mixed and packed with a substance, to wit, spirit vinegar, and with other substances to the libelant unknown, which reduced, lowered, and injuriously affected its quality and strength, and, further, for the reason that another substance had been substituted in whole or in part for the genuine article of food.

Misbranding was alleged for the reason that each of the barrels was branded and labeled "Purity Brand Pure Apple Cider Vinegar," meaning thereby that the article was a vinegar made of pure apple cider, whereas, in truth and in fact, it was not, but was a vinegar made in imitation of pure apple cider vinegar. Misbranding was alleged for the further reason that the article was labeled as aforesaid, when, in truth and in fact, it was not a vinegar made of pure apple cider, and said barrels and their contents were therefore so branded and labeled as to deceive and mislead the purchaser.

On May 1, 1916, the cases having been consolidated into one proceeding, and Geo. Naas and George H. Naas, trading as Geo. Naas & Son Co., Cohocton, N. Y., claimants, having paid the costs of the proceedings and consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be redelivered and surrendered to said claimants upon the execution of bond in the sum of $2,000, in conformity with section 10 of the act.

CARL VROOMAN,
Acting Secretary of Agriculture.

4848. Misbranding of Barrell's Indian Liniment. U. S. v. The H. G. O. Cary Medicine Co., a corporation. Plea of guilty. Fine, $50 and costs. (F. & D. No. 6320. I. S. No. 12728–e.)

On January 22, 1916, the United States attorney for the Southern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against The H. G. O. Cary Medicine Co., a corporation, Zanesville, Ohio, alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about March 10, 1913, from the State of Ohio into the State of West Virginia, of a quantity of Barrell's Indian Liniment which was misbranded. The article was labeled: (On carton) "Barrell's Indian Liniment Alcohol 31%. The Best Remedy ever yet discovered for External or Internal Applications. Prepared from the original Indian Recipe. It has been found to effect the most surprising relief in the following Diseases of Man: Inflammatory and Chronic Rheumatism, Sore Throat, Croup, Swelled Limbs, Pains in the Breast, Back or Side, Stiff Joints, Ague in the Face, Sprains Salt Rheum, Bruises, Chilblains, Toothache, Pains in the Joints, Stings of Insects, Burns, Frosted Feet, Sun Pain, Issues, Nervous Diseases, Weakness in the Ankles and Limbs generally, Erysipelas, Headache, Diseases of the Spine, Cholera, Cholera Morbus, Bloody Flux, Diarrhoea, etc. Try it once Price 25 Cents (New Style adopted July 1st, 1912)" (On one side of carton) "For Horses: It can not be surpassed for Sprains, Galls, Chafes, Scratches, Strains of the Shoulder, Stifles, Cracked Hoofs, Ring Worms, Sweeney, Fistula, etc. The most severe cases of Botts or Colic in Horses and Cattle have been cured by the Indian Liniment. Guaranteed by H. G. O. Cary Medicine Company under the Food and Drugs Act, June 30, 1906. Number 3273." (On other side of carton) (Entered according to Act of Congress) Prepared only by H. G. O. Cary Medicine Company Cary's Family Medicines Zanesville, Ohio." (On bottle) (Blown in bottle) "Barrell's Indian Liniment, H. G. O. Cary." The circular or pamphlet accompanying the article contained, among other things, the following: "It penetrates speedily, relaxing contracted Cords. Restoring the use of Limbs long paralyzed, Restoring the use of Muscles which have long lost their action, from various causes." "For Affections of the Lungs, Weakness of the Sides, Breast or Back, Liver Complaints, Enlargement of the Spleen, &c., great cures have been effected by applying the Indian Liniment externally, with a few drops taken on a lump of sugar internally. For Long Standing Colds and Coughs, and Soreness accompanying such affections, it has no equal Bilious Cholic, Cramp in the Bowels and Stomach, Cholera Morbus, &c., an effectual and safe remedy." "For Man. It cures Inflammatory and Chronic Rheumatism, Sore Throat, Croup, Swelled Limbs, Pains in the Breast, Back or Side, Stiff Joints, Ague in the Face, Sprains, Salt Rheum, Bruises, Chilblains, Tooth-ache, Sting of Insects, Burns, Frosted Feet, Sun Pains, Issues Nervous Diseases, Weakness in the Ankles and Limbs generally, Erysipelas, Headache, Diseases of the Spine, &c." "Erysipelas. Some of the most astonishing cures have been performed by applying the Liniment to the parts affected." "Diseases of the Lungs. Consumption, Coughs, Colds, Phthisic, Shortness of Breath, and General Debility effectually cured by applying the Liniment externally, and taking 15 or 20 drops internally." "Quinsy and Sore Throat. This painful and often fatal disease can now be speedily cured by applying the Liniment to the throat with a flannel, which should be worn during the treatment; at the same time take 20 drops every hour on a piece of sugar, allowing it to dissolve in the mouth." "Cholera Morbus, Bilious Colic, Cramp in the bowels or stomach, Dysentery, Cholera Infantum and all diseases of the bowels cured by taking 20 drops every hour, oftener if necessary, and

at the same time apply the Indian Liniment to the bowels on a piece of flannel. There is nothing better." "Cholera Cured by the Indian Liniment:—a disease for which it was never recommended; but when it broke out in Fayette County, Ohio, with great violence last summer, it was resorted to with infallible success in every case, until the supply in the hands of Agents, all over that section of the country was exhausted." "Pleurisy. In one of the worst cases imaginable, after exhausting every remedy of the Faculty, to no purpose, resort was had to the Indian Liniment, which gave immediate relief, and produced a speedy cure." "Bloody Flux. A certain and safe cure for this usually fatal disease speedily effected by using the Indian Liniment, as can be proved by a vast number of cases the past season." "The wonderful cures it has lately been performing in Consumption, diseases of the Lungs, and long standing Colds, curing the most severe cases of that dreadful and until now incurable disease, Asthma, will alone make it the most popular medicine in the world. In fact, it is now so generally and with so much success taken Internally, that we are at a loss which to recommend the strongest, External or Internal application; it must supercede all other medicines of its kind."

Analysis of a sample of the articles by the Bureau of Chemistry of this department showed it to be a hydroalcoholic solution of oleo resin of capsicum, turpentine, oil of sassafras and soap, containing 49.1 per cent of alcohol, 10 per cent of volatile oil, and 2.8 grams of solids per 100 cc.

Misbranding of the article was alleged in the information for the reason that the statement, to wit, "Alcohol 31%," borne on the carton thereof, was false and misleading in that it represented to purchasers thereof that the article contained 31 per cent of alcohol, when, in truth and in fact, it contained a greater amount of alcohol, to wit, 49.1 per cent. Misbranding was alleged for the further reason that the following statements regarding the therapeutic or curative effects of the article, appearing on the label aforesaid, to wit, "It has been found to effect the most surprising relief in the following Diseases of Man: Inflammatory * * * Rheumatism * * * Erysipelas * * * Cholera * * *" and included in the circular or pamphlet aforesaid, to wit, "It penetrates speedily, * * * Restoring the use of Limbs long paralyzed, Restoring the use of Muscles which have long lost their action * * *." "For * * * Enlargement of the Spleen, * * * great cures have been effected by applying the Indian Liniment externally, with a few drops taken on a lump of sugar internally. * * *." "* * * It cures Inflammatory and Chronic Rheumatism * * *." "Erysipelas. Some of the most astonishing cures have been performed by applying the Liniment to the parts affected." "* * * Consumption * * * effectually cured by applying the Liniment externally, and taking 15 or 20 drops internally." "Quinsy * * *. This painful and often fatal disease can now be speedily cured by applying the Liniment to the throat * * * at the same time take 20 drops every hour on a piece of sugar * * *." "* * * all diseases of the bowels cured by taking 20 drops every hour, oftener if necessary, and at the same time apply the Indian Liniment to the bowels on a piece of flannel. * * *." "Cholera cured by the Indian Liniment. * * *." "Pleurisy. * * * Indian Liniment * * * gave immediate relief, and produced a speedy cure." "Bloody Flux. A certain and safe cure for this usually fatal disease speedily effected by using the Indian Liniment, * * *." "The wonderful cures it has lately been performing in Consumption, * * * and * * * curing the most severe cases of that dreadful and until now incurable disease, Asthma, will alone make it the most popular medicine in the world. * * *," were false and fraudulent in that they were applied to said article knowingly, and in reck-

less and wanton disregard of their truth or falsity, so as to represent falsely and fraudulently to the purchasers thereof, and create in the minds of purchasers thereof the impression and belief, that it was, in whole or in part, composed of, or contained, ingredients or medicinal agents effective, among other things, as a relief for inflammatory rheumatism, erysipelas, and cholera, to restore the use of limbs long paralyzed and of muscles which have long lost their action, as a cure for enlargement of the spleen, inflammatory rheumatism, chronic rheumatism, erysipelas, consumption, quinsy, all diseases of the bowels and cholera, for the relief of pleurisy, and for the cure of pleurisy, bloody flux, and asthma, when, in truth and in fact, it was not, in whole or in part, composed of, and did not contain, such ingredients or medicinal agents.

On June 1, 1916, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $50 and costs.

CARL VROOMAN,
Acting Secretary of Agriculture.

4849. Misbranding of Dr. Williams' Pink Pills. U. S. v. 11 Gross Packages of Dr. Williams' Pink Pills. Tried to the court and a jury. Verdict in favor of the United States. Decree of condemnation, forfeiture, and destruction. Decision of the United States Circuit Court of Appeals for the Third Circuit affirming the decree of the lower court ordering the destruction of the product. (F. & D. No. 6384. I. S. No. 490-k. S. No. E-233.)

On March 19, 1915, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel, and, on April 17, 1915, a petition and agreement to amend the libel, praying the seizure and condemnation of 11 gross packages, more or less, of Dr. Williams' Pink Pills, remaining unsold in the original unbroken packages at Philadelphia, Pa., alleging that the article had been shipped and transported from the State of New York into the State of Pennsylvania, and charging misbranding in violation of the Food and Drugs Act, as amended. The article was labeled: (on bottle wrapper), "Dr. Williams Pink Pills for Pale People, trade-mark registered, safe and effective tonic for the blood and nerves for anaemia, diseases due to impoverished blood, such as rheumatism, diseases of women, nervous disordesr resulting from malnutrition, including neuralgia, sciatica, St. Vitus' Dance, Useful in locomotor ataxia and partial paralysis. A digestive tonic for dyspepsia and chronic constipation." The circulars accompanying the article contained, among other things, the following: "This remedy is offered the public with full confidence in its efficacy in the treatment of diseases arising from or dependent upon impoverished Blood, such as Anaemia, Chlorosis or Green Sickness, Rheumatism, Lumbago, General Debility, Female Weakness, Leucorrhoea, Tardy, Irregular or Painful Periods, Disturbances due to Change of Life, etc." "As the health of the nerves depends directly upon the condition of the blood these pills are a valuable remedy for Nervous Debility, Nervous Prostration, Sleeplessness, Neuralgia, Sciatica, Sick Headache, and have accomplished beneficial results in the more severe nervous disorders such as St. Vitus' Dance, Partial Paralysis and Locomotor Ataxia." "Locomotor Ataxia.—This is one of the most stubborn of nervous diseases in yielding to treatment of any kind. Cases diagnosed as Locomotor Ataxia and a Partial Paralysis, and having characteristic symptoms have shown beneficial results under this tonic treatment and in the cases under observation the resulting improvement has been lasting." "For Men.—Dr. Williams Pink Pills are valuable for building up the system shattered by excesses or disease, and for the various ills caused thereby, viz: Spermatorrhoea, Impotence, Nervous Despondency, Confusion of Ideas, Irritability of Temper and Pain in the Back and Perinaeum." "For Children.—Parents will find Dr. Williams Pink Pills a safe and effective strengthening medicine for weak and bloodless children. The remedy is also suitable as a nerve tonic for the young and for the treatment of St. Vitus' Dance."

Misbranding of the article was alleged in the libel and amended libel for the reason that the following statements regarding the curative or therapeutic effect of such article appearing on the label of the retail packages aforesaid, to wit, (On wrapper around bottle) "For Anaemia, Diseases due to Impoverished Blood, such as Rheumatism, Diseases of Women; Nervous Disorders resutling from Malnutrition, including Neuralgia, Sciatica, St. Vitus' Dance. Useful in Locomotor Ataxia and Partial Paralysis. A digestive tonic for Dyspepsia and Chronic Constipation." (On circular) "This remedy is offered the public with full confidence in its efficacy in the treatment of diseases arising from or dependent upon impoverished Blood, such as Anaemia, Chlorosis or Green Sickness, Rheumatism, Lumbago, General Debility, Female

Weakness, Leucorrhoea, Tardy, Irregular or Painful Periods, Disturbances due to Change of Life, Etc." "As the health of the nerves depends directly upon the condition of the blood these pills are a valuable remedy for Nervous Debility, Nervous Prostration, Sleeplessness, Neuralgia, Sciatica, Sick Headache, and have accomplished beneficial results in the more severe nervous disorders such as St. Vitus' Dance, Partial Paralysis and Locomotor Ataxia." "Locomotor Ataxia.—This is one of the most stubborn of nervous diseases in yielding to treatment of any kind. Cases diagnosed as Locomotor Ataxia and as Partial Paralysis, and having characteristic symptoms have shown beneficial results under this tonic treatment, and in the cases under observation the resulting improvement has been lasting." "For Men.—Dr. Williams Pink Pills are valuable for building up the system shattered by excesses, or disease, and for the various ills caused thereby, viz: Spermatorrhoea, Impotence, Nervous Despondency, Confusion of Ideas, Irritability of Temper and Pain in the Back and Perinaeum." "For Children.—Parents will find Dr. Williams Pink Pills a safe and effective strengthening medicine for weak and bloodless children. The remedy is also suitable as a nerve tonic for the young and for the treatment of St. Vitus' Dance," were false and fraudulent in that they indicated to the purchaser thereof, and created in the minds of the purchasers thereof the impression and belief, that said article was a remedy for, when in fact it was not a remedy for, anemia, chlorosis or green sickness, rheumatism, lumbago, general debility, female weakness, leucorrhea, tardy, irregular, or painful periods, nervous debility, nervous prostration, sleeplessness, neuralgia, sciatica, sick headache, St. Vitus' dance, partial paralysis, locomotor ataxia, spermatorrhea, and impotence, and which said statements were made with the knowledge of their falsity and in reckless and wanton disregard of their truth or falsity, for the purpose of defrauding purchasers.

On April 30, 1915, the Dr. Williams Medicine Co., claimant, Schenectady, N. Y., filed its answer to the libel as amended, and on October 20, 1915, the case having come on for trial before the court and a jury, after the submission of evidence and argument by counsel, the following charge was delivered to the jury on October 25, 1915, by the court (Thompson, *D. J.*):

Gentlemen of the jury: The case which has been tried before you is a proceeding under the Pure Food and Drugs Act. The proceedings in this case are not brought against an individual, but are brought against certain packages of pills. The act of Congress under which the proceedings are brought was passed for the purpose of preventing the transportation in interstate commerce—that is, from one State to another, of foods, articles of food, or articles of drug which are adulterated for misbranded. In this case the proceeding is brought for the purpose of confiscating or having condemned these packages of pills upon the allegation of the Government that they are misbranded. So that the proceedings have been commenced by a seizure on the part of the Government, the articles in question being seized by the marshal. The Dr. Williams Pink Pills Co. has intervened as the claimant of these pills; that is to say, it comes into court and claims that the pills belong to it, that they are its property, and it denies the statements in the Government's libel, as it is called, on which the Government bases its right to have these pills seized and destroyed. So that that makes the issue in the case, and throws the burden on the Government of proving the facts which are set out in the libel. The object of this particular paragraph of the act under which these proceedings are brought is to prevent the carrying in interstate commerce from one State to another of drugs which are worthless or injurious, when they are transported with false and fraudulent statements as to their curative effects, the object being to protect credulous and ignorant people, and to protect the public generally from having imposed upon them as medicines, things to be used as medicines, drugs which will not perform the functions which it is claimed they will perform, and to prevent people being injured by the use of harmful drugs. In this case the pills are claimed to be misbranded because the packages contain certain statements as to their therapeutic and curative properties, which the Government claims are

false and fraudulent. You have heard the evidence in the case. As I stated, the burden is on the Government to prove what it alleges in its libel. That requires, in a case of this sort, that the statement shall not only be false, but shall be fraudulent. So that there will be a double inquiry of the jury here—first, to ascertain whether the statements are false, and, second, as to whether they are fraudulent. So that in examining into the case it will be necessary for you to examine the labels on the packages, of which you will have copies, and the statements made in the pamphlet or folder that accompanied the packages, and to take into consideration the language used in those statements and ascertain what the statements are. In examining those statements you will give to the language used its ordinary and common meaning, and you will take into consideration what those statements would mean to an ordinarily intelligent man who purchased the pills. Having applied that test to the language in determining what the language as set out means, you will then determine from the evidence whether those statements are false. If they are not false, if the statements are true, then, of course, you need go no further in the case. In determining whether they are false, you will take into consideration the testimony which has been offered on the part of the Government, and the evidence which has been offered on the part of the claimant. There has been a great deal of expert testimony here, testimony, in the first place, on the part of the chemists who analyzed these packages, these pills, and who have testified before you as to what are the contents or the ingredients of the pills. In addition to that there has been medical testimony, the testimony of expert physicians, who have testified as to their opinion as to the therapeutic or curative value of those ingredients, the ingredients which they were informed by the testimony of the chemists were contained in the pills.

In considering expert testimony there has been a good deal said here about it being merely opinion testimony. That is true. The statements of the physicians are merely statements of their opinions, and those opinions are to be considered by you as evidence from which you may draw inferences of fact. The opinions of the experts have more or less value, as they are based on a greater or less amount of experience and learning and opportunities to know what the opinions of other people are who are skilled in the profession as to the therapeutic value of these pills for the ailments for which they are recommended in the statements on the boxes and in the pamphlets as remedies. So that you will take into consideration the testimony of these experts and draw from that testimony such inferences of fact as in your own judgments that testimony warrants.

The question, then, will be whether the statements on these labels are true or are false. If you determine that the statements are true, considering the interpretation which would be conveyed to the mind of the ordinarily intelligent man, then it would be your duty to render a verdict for the defendant. If, on the other hand, you are satisfied from the evidence, from the preponderance of the evidence, that they are false, then you would proceed further to determine whether or not they are fraudulent.

As I stated, the object of this part of the act is to prevent credulous and ignorant people and the public generally from being deceived in the purchase of proprietary medicines such as these are. So that in determining whether they are fraudulent you will take into consideration the statements made on the labels, and determine whether or not the claimant, when it made these statements, had them put upon the bottles, knew them to be false. If it knew them to be false, then you would have no difficulty in determining that they were fraudulent, because it would be the inevitable conclusion, willfully making a false statement, that it intended to defraud. But you are at liberty to go further than that. In determining a man's intent, we are very often, and in fact nearly always, obliged to take into consideration the facts and circumstances accompanying his act. Every man is presumed to intend the natural and probable consequences of his act. So that it is not necessary, and it is impracticable, to go into a man's inner consciousness and find out whether or not he intended a thing, but the law imputes the intent to do the thing which would naturally follow from the act of the person charged with the intention. So that in this case you will take into consideration, in case you go that far with the case, whether these statements made on the label were made with an intent to defraud, or with such willful and gross negligence to inquire into the effect of these medicines before making the statements, that the intent to defraud would be presumed. In case, after a consideration of all of the evidence, you determine that the statements were false, that they were made with

an intent to deceive the public, and the pills were transported with those statements with that intent, then it would be your duty to return a verdict in favor of the Government.

As I stated, the burden of proof in this case is on the part of the Government. It is necessary for you to be convinced by a preponderance of the evidence that the Government has sustained that burden of proof before you would be justified in returning a verdict in its favor.

If, on the other hand, you are satisfied from the evidence that the Government has not sustained that burden of proof, or you are satisfied that the pills were shipped in interstate commerce, with an honest belief on the part of those responsible for making the statements that they would do just what was stated on the labels they would do, then it would be your duty to return a verdict in favor of the defendant.

When you come to consider the statements made in the labels, you will take the statements into consideration in whole and also separately. In other words, if you find that any statement made on these labels or on the folders in relation to the curative or therapeutic value, effect of the pills, was false and fraudulent, then it would be your duty to return a verdict in favor of the Government; that is to say, if any part of those statements is such that you, under the manner of reasoning that I have explained to you, conclude it is false and fraudulent, that would be sufficient to cause a condemnation of the whole of these packages. It is not necessary that all the statements should be false and fraudulent, but if the Government has sustained its contention in regard to any one of them, then it would be your duty to return a verdict in its favor. So that in considering the statements, you will bear that in mind.

I hardly think it is necessary for me to review the statements which are made and which are set out in the Government's libel as having been made on these packages. You have heard all of the evidence, and you will have the labels with you, and you will consider the language in the effect which in your judgment it would convey to the mind of an ordinarily intelligent man. As I read the labels there is no direct statement that these pills are cures for the various sorts of diseases mentioned. The general effect of the statements is that the pills are valuable as a tonic for the blood and nerves, and that they are valuable for use in cases where the ailment is the result of or is accompanied by anemia. So that in considering that you will take those facts into consideration, and determine whether or not it was the intention of this language, interpreting it as an ordinarily intelligent man would, on the part of the claimants to convey the impression that they were to cure or act as a remedy for the diseases and ailments even where the language does not directly say so. If it was the intention so to frame a statement that it conveyed those impressions, and those statements were false, and they were known to be false, or you can infer the intention to defraud, then it would be your duty to return a verdict in favor of the Government. If you do not find that intention, of course you will return a verdict in favor of the defendant.

The district attorney has asked me to charge you on certain points:

"1. It is unnecessary for the Government to prove that all the statements on the label or circular were false and fraudulent. If you believe from the evidence that any one statement as to the curative or therapeutic properties of these pills was false in fact, and that the claimant knew that it was false, then you may find a verdict for the Government."

That point is affirmed.

"2. If you believe from the evidence that as to any one of the ailments for which these pills are recommended by the label or circular, and about which the Government has complained in its libel, these pills would have no beneficial effect whatever, and the claimant knew this, you may find a verdict for the Government."

I will affirm that point.

"3. If you believe from the evidence that any one of the therapeutic claims as to the effect of these pills upon locomotor ataxia, St. Vitus' dance, sciatica, rheumatism, impotence, spermatorrhœa, or partial paralysis was false and was made by the claimant with a reckless and wanton disregard as to whether it was true or false, you may find a verdict for the Government."

I will affirm that point.

The fourth point is declined.

"5. If you believe from the evidence that any one of the therapeutic statements upon the label or circular, and of which the Government complains in its libel, was partly true, but was so artfully worded as to convey a meaning

as to its therapeutic properties which was wholly false, and that the label and circular were so worded for the purpose of deceiving the public, then that statement would be false and fraudulent, and you may find a verdict for the Government."

I will affirm that point.

I will decline the sixth point.

The claimant has requested me to charge you as follows:

"1. The burden is on the Government in this case to prove by the preponderance of the evidence that the statements complained of were both false and fraudulent."

That point is affirmed.

"2. There is a difference between mistaken opinion and false opinion. You can only find that these statements were false if you find that the Government has shown that, apart from any question of opinion, the so-called remedy is absolutely worthless and hence the label demonstrably false."

That is true, but it depends on how you find the question of fact based on the opinion evidence. If you find it as a fact that the statements were false, and known to be false, then, of course, your verdict would be for the Government. If you find as a fact that they were not false, or that being false there was no intent on the part of the defendant, either actual intent or implied intent to defraud, then your verdict would be for the claimant.

The defendant's third point is denied.

The defendant's fourth point is denied.

The fourth and sixth points presented on behalf of the United States, which were refused by the court without being read, are as follows:

"4. If you believe from the evidence that the defendant knew that any one of these therapeutic statements as charged in the libel was false and misleading, you may infer a fraudulent intent and find a verdict for the Government."

"6. If you believe from the evidence that any statement upon the label or circular as to its therapeutic claim was wholly false and one about which there is absolutely no contrariety of medical opinion, you may infer from these facts a fraudulent intent and find a verdict for the Government."

(Exception noted for the United States to the refusal of the court to affirm the fourth and sixth points presented on behalf of the United States.)

(Exception noted for the United States to the affirmance by the court of the defendant's first and second points, by direction of the court.)

The third and fourth points presented on behalf of the claimant, which were refused by the court without being read, read as follows:

"3. Unless you find that the Government has shown that the statements complained of were not the honest expression of Mr. Conde's honest opinion, you can not find that these statements were fraudulent."

"4. Under all the evidence in the case your verdict must be for the defendant."

(Exception noted for the claimant to the refusal of the court to affirm the third and fourth points presented on behalf of the claimant.)

(Exception noted for the claimant to the affirmance by the court of the Government's first, second, third, and fifth points, by direction of the court.)

(Exception noted for the claimant to the court's answer to the second point present on behalf of the claimant, by direction of the court.)

Mr. JONES. I would like to except to the charge because of the failure to make clear just what the difference is between "mistaken opinion" and "false opinion."

(Exception noted for the claimant, as requested, by direction of the court.)

Mr. JONES. I would like to have the Government correspondence go out with the jury.

Mr. STERRETT. I object to those letters going out with the jury—the Government letters.

The COURT. Were they offered in evidence?

Mr. JONES. They were offered in evidence and read.

The COURT. You may send them out with the jury.

Mr. STERRETT. May I have an exception?

The COURT. Yes.

(Exception noted for the United States, by direction of the court.)

Mr. STERRETT. I do not know what they are; that is the only thing.)

The jury thereupon retired, and after due deliberation returned into court with a verdict in favor of the United States; and on October 28, 1915, the said

claimant company by its counsel filed its motion with reasons for a new trial, which was overruled on December 28, 1915, and thereupon a decree of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal and that the claimant company should pay the costs of the proceedings.

On January 5, 1916, the claimant company filed its petition for a writ of error and assignments of error to the United States Circuit Court of Appeals for the Third Circuit, which was allowed on the same date, and on April 4, 1916, the case was argued in said court before Circuit Judges Buffington, McPherson, and Woolley.

On May 22, 1916, the case having come on for final disposition, the judgment of the lower court was affirmed, as will more fully appear from the following decision by the said Circuit Court of Appeals (Buffington, *Circuit Judge*):

In the court below, the United States filed a libel to forfeit certain packages of pills. Thereupon the Dr. Williams Medicine Company claimed the packages seized, answered the libel, and the case proceeded to trial. After a verdict for the plaintiff and a decree of forfeiture, the claimant sued out this writ.

The claim of forfeiture is based on an alleged misbranding of the packages of pills in violation of an amendment to the Food and Drugs Act, passed August 23, 1912, which provides:

"That for the purpose of this act an article shall also be deemed to be misbranded: In case of drugs * * * Third, if its package or label shall bear or contain any statement, design, or device, regarding the curative or therapeutic effect of such article, or any of the ingredients or substances contained therein, which is false and fraudulent."

The errors alleged group themselves into rulings on evidence, answers to points and exceptions to the court's charge. Without entering into a discussion of the many refined questions of words, terms, and medical theories with which the general subject is beclouded, we may say that to our mind the words used in the statute are clear in meaning, and the court below tried the case on that basis. The purpose of the act was, in the branding of drugs, to punish false and fraudulent statements regarding the curative or therapeutic effects of such drug or any of its ingredients. It follows, therefore, the case below resolved itself into two questions: First, were the statements regarding the curative or therapeutic effects of these pills false, and, second, were they fraudulent? Without citing in detail the rulings of the court in admitting the evidence, in answering the points and in charging the jury, we may say the court consistently adhered to admitting proof and directing the attention of the jury in points and charge to the two decisive elements of the branding being false and fraudulent. Limiting our extracts to locomotor ataxia alone, we note the branding complained of made the statement that the pills were—

"Useful in locomotor ataxia and partial paralysis. * * * This remedy is offered to the public with full confidence in its efficacy in the treatment of diseases arising from or dependent upon impoverished blood. * * * rheumatism, leucorrhoea. * * * These pills are a valuable remedy for * * * sciatica * * * and have accomplished beneficial results in * * * partial paralysis and locomotor ataxia * * * cases diagnosed as locomotor ataxia and as partial paralysis, and having characteristic symptoms have shown beneficial results under this tonic treatment and in the cases under observation the resulting improvement has been lasting."

The libel alleged that:

"These statements were false and fraudulent in this, that they indicated to the purchaser thereof and created in the minds of the purchasers thereof the impression and belief that the said article was a remedy for, when in fact it was not a remedy for, locomotor ataxia, partial paralysis, etc.,"

and that

"These statements were false and fraudulent in this, that they indicated to the purchaser thereof and created in the minds of the purchasers thereof the impression and belief that the said article was a remedy for, when in fact it was not a remedy for, partial paralysis, locomotor ataxia, etc., which statements were made with the knowledge of their falsity and in reckless and

wanton disregard of their truth or falsity for the purpose of defrauding the purchasers."

In support of its case, the Government called several witnesses, physicians of proven ability, knowledge, and experience, who testified that the pill would not and why it could not have any beneficial effects in locomotor ataxia and the other diseases named. They also testified to the fact that medical opinion was unanimous in so saying. It was also shown, and all of this without contradiction, that the pill was practically the well-known Blaud pill used generally in medical practice. It is complained, however, that the testimony of these witnesses was not competent, being a mere expression of their personal opinion or views. But an examination of the proofs shows that the case was wholly different from one where witnesses were testifying to their personal views upon a controverted question of opinion. The testimony here was of fact, namely, that there was general, uncontroverted concensus of opinion. For example, referring to the effect of these pills, the proofs were:

"Q. How about locomotor ataxia?

"A. Utterly useless.

"Q. Is there any difference at all in medical opinion on that point?

"A. I should say not, as far as I know medical opinion * * *.

"Q. Is there anything known to medicine that can have a beneficial effect upon all these various troubles in one pill?

"A. No, sir.

"Q. Is there any difference of medical opinion on that point?

"A. None whatever. I think medical opinion would be unanimous on that."

In the absence of countervailing proof in such matters, it was manifestly a question for the jury to determine the fair or fraudulent character of the branding statement. This question the court left to it, saying if they were satisfied, "that the pills were shipped in interstate commerce, with an honest belief on the part of those responsible for making the statement that they would do just what was stated on the label they would do, that then it would be your duty to return a verdict in favor of the defendant." Referring to such statements, the court further said:

"You will take those facts into consideration and determine whether or not it was the intention of this language, interpreting it as an ordinarily intelligent man would, on the part of the claimants to convey the impression that they were to cure or act as a remedy for the diseases and ailments even where the language does not directly say so. If it was the intention to so frame a statement that it conveyed those impressions and those statements were false, and they are known to be false, or you can infer the intention to defraud, then it would be your duty to return a verdict in favor of the Government. If you do not find that intention, of course you will return a verdict in favor of the defendant."

See also, in answer to points, the court said, in substantial accord with *Cooper* v. *Schleslinger*, 111 U. S. 148, and *Lehigh Co., etc.*, v. *Bamford*, 150 U. S. 665:

"If you find it as a fact that the statements were false, and known to be false, then, of course, your verdict would be for the Government. If you find as a fact that they yere not false, or that being false there was no intent on the part of the defendant, whether actual intent or implied intent, to defraud, then your verdict would be for the claimant.

"If you believe from the evidence that any one of the therapeutic claims as to the effect of these pills upon locomotor ataxia, St. Vitus' dance, sciatica, rheumatism, impotence, spermatorrhea, or partial paralysis, was false, and was made by the claimant with a reckless and wanton disregard as to whether it was true or false, you may find a verdict for the Government."

On the whole, we may say the cause was properly tried and fairly submitted, and finding no error in the rulings, charge, points, or answers in the court below, its decree is affirmed.

CARL VROOMAN,
Acting Secretary of Agriculture.

4850. Misbranding of tankage. U. S. v. Swift & Co., a corporation. Tried to the court and jury. Verdict of guilty. Fine, $150. (F. & D. No. 6408. I. S. No. 9138–e.)

On November 19, 1915, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Swift & Co., a corporation, with a place of business at Newark, N. J., alleging shipment by said company, in violation of the Food and Drugs Act, on or about January 16, 1913, from the State of New Jersey into the State of Maryland, of a quantity of tankage which was misbranded. The article was labeled: "100 Lbs. Swift's Digester Tankage. Guaranteed Analysis:—Protein 60% to 70%; Phosphate 6 to 8%—Manufactured by Swift & Company, Harrison Station, Newark, N. J."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Moisture (per cent)	4.71
Protein (per cent)	43.75

Misbranding of the article was alleged in the information for the reason that the following statement appearing on the label aforesaid, "Protein 60% to 70%," was false and misleading in that it indicated to the purchasers thereof that the article contained from 60 to 70 per cent of protein, and for the further reason that it was labeled "Protein 60% to 70%" so as to deceive and mislead the purchasers into the belief that it contained from 60 to 70 per cent of protein, when, in truth and in fact, it did not, but contained a less amount thereof, to wit, 43.75 per cent of protein.

On May 12, 1916, the case having come on for trial before the court and a jury, after the submission of evidence and arguments by counsel, the following charge was delivered to the jury by the court (Haight, *D. J.*):

Gentlemen of the jury: The defendant, Swift & Company, is charged with having violated the National Pure Food and Drugs Act, with which generally, no doubt, all of you are familiar, both as respects its general scope and the purpose for which it was enacted. I shall not, therefore, endeavor to explain the many features of the act to you.

It appears that on January 17 or 18, 1913, Swift & Company shipped to a concern at Baltimore, Maryland, a certain number of boxes containing "digester tankage," and on those boxes they caused to be written or labeled that the products therein contained protein to the amount of from 60 to 70 per cent. These facts are not disputed at all; they are admitted. The Government contends that this tankage did not in reality contain protein to the extent of from 60 to 70 per cent, but that the amount of protein, or the percentage of protein, in the tankage was much less, it having been testified by the witnesses for the Government that the three examinations which were made for the purpose of ascertaining the amount of protein resulted as follows: In the analysis which was made in the summer—I think it was in July—of 1913 the tankage was found to contain protein to the extent of 44.19 per cent. At the examination that was made on November 6, 1913, it was found that the protein in the tankage was 44.75 per cent; and then at the subsequent analysis, which was made by Mr. Bidwell, in January of 1914, it was found that the protein in the tankage was 43.19 per cent.

Now then, it is admitted that this tankage was shipped from one State to another. That is a necessary element of the crime charged—that it be shipped from one State to another—namely, from the State of New Jersey to the State of Maryland. It is also admitted that the bags in which the tankage was contained purported to be and were in fact labeled so as to convey to a person who looked at it information that the amount of protein in the tankage was from 60 to 70 per cent. The only question to be decided is this: What amount of protein did it contain at the time it was shipped—namely, in January of 1913? If it contained less at that time than the 60 to 70 per cent, which is the amount mentioned on the labels of the bags in which the tankage was

packed, then the defendant is guilty. If it did not contain less than the 60 to 70 per cent, then the defendant is not guilty. So, gentlemen, you have only that simple question to determine.

Now, then, the defendant finds itself in an embarrassing position by reason of its inability to get a witness, and has not been able to, at any rate has not, produced any evidence as to the amount of protein that was in this tankage at the time it was shipped. Nor, for that matter, has the Government, and necessarily so, been able to produce any direct evidence as to the amount of protein that was in the tankage at the time it was shipped, because the Government did not and indeed could not at that time make an analysis of it. But in the July succeeding the time of the shipping of the tankage, which was about six months thereafter, an analysis was made of some samples of the tankage, which admittedly had been taken by the Government from these bags, and it was then found that it contained a far less amount of protein than the amount stated on the bags in which it was.

You have heard the evidence of the Government's chemists as to the condition of the tankage as they found it, and the unlikelihood that the amount of protein in the tankage could have been materially changed by any conditions that may have existed between the time of shipping and the time of the analysis; and therefore if you find from the evidence in the case that there is nothing to account for the difference in the amount of protein stated on the labels and the amount of protein that the Government chemists state they found, then your verdict will be that the defendant is guilty. If on the other hand you are not convinced from the evidence that the amount of protein that the tankage was found to contain in July, or at the time of any of these examinations, fairly represents the amount of protein it contained in January, then your verdict will be that the defendant is not guilty.

As this is a criminal case the general rule of the criminal law is applicable to it; that is, that every man is presumed to be innocent until he is proven guilty. The burden of proving that the defendant is guilty beyond a reasonable doubt rests upon the Government. I do not mean by that that a person in order to be found guilty must be proven guilty beyond all doubt, but only beyond a doubt based upon reason and arising from evidence; not a doubt that is merely captious or capricious, but a doubt which prevents you, upon all the evidence that you have, from having an abiding conviction of the guilt of the defendant, or saying that you are convinced of its guilt to a moral certainty. If under those circumstances you have a reasonable doubt of the guilt of the defendant, then your verdict must be not guilty.

The jury thereupon retired, and, after due deliberation, returned into court with its verdict of guilty, and the court imposed a fine of $150.

CARL VROOMAN,
Assistant Secretary of Agriculture.

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WASHINGTON : GOVERNMENT PRINTING OFFICE : 1917

S. R. A.—Chem. Suppl. 28. Issued September 25, 1917.

United States Department of Agriculture,

BUREAU OF CHEMISTRY.

C. L. ALSBERG, Chief of Bureau.

SERVICE AND REGULATORY ANNOUNCEMENTS.

SUPPLEMENT.

N. J. 4851—4900.

[Approved by the Acting Secretary of Agriculture, Washington, D. C. Sept. 18, 1917.]

NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT.

[Given pursuant to section 4 of the Food and Drugs Act.]

4851. Misbranding of shorts. U. S. * * * v. The Blaker Milling Co., a corporation. Plea of guilty. Fine, $25 and costs. (F. & D. No. 6445. I. S. No. 9774–e.)

On December 15, 1915, the United States attorney for the district of Kansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Blaker Milling Co., a corporation, Pleasanton, Kans., alleging shipment by said company, in violation of the Food and Drugs Act, on or about April 22, 1913, from the State of Kansas into the State of Missouri, of a quantity of shorts, which article was misbranded. The article was labeled: "100 Pounds Pure Wheat Shorts. Made by The Blaker Milling Co., Pleasanton Kans. Guaranteed Analysis: Crude Protein not less than 17.50%; Crude fat not less than 4.00%; Carbohydrates not less than 58.00%; Crude Fiber not over 6.50%. Ingredients, Wheat Product Only."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Crude protein (per cent)	15.88
Ether extract (crude fat) (per cent)	3.00

Misbranding of the article was alleged in the information for the reason that the statement, to wit, "Crude protein not less than 17.50%; Crude fat not less than 4.00%," borne on the sack containing the article, was false and misleading, in that it represented that the article contained not less than 17.50 per cent of crude protein and not less than 4 per cent of crude fat; and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it contained 17.50 per cent of crude protein and 4 per cent of crude fat, whereas, in truth and in fact, it did not contain said amounts of crude protein and crude fat, but contained less amounts, to wit, 15.88 per cent of crude protein and 3 per cent of crude fat.

On January 21, 1916, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $25 and costs.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4852. Misbranding of "Constitutional Tonic Catarrh Remedy." U. S. * * * v. Chauncey B. Littlefield et al. (Littlefield & Co.). Plea of guilty by defendant Littlefield. Fine, $50 and costs. Information nolle prossed as to other defendants. (F. & D. No. 6446. I. S. No. 8061–c.)

On August 9, 1915, the United States attorney for the District of New Hampshire, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Chauncey B. Littlefield, Olive Rand Clarke, Arthur E. Clarke, and William C. Clarke, trading as Littlefield & Co., Manchester, N. H., alleging shipment by said defendants, in violation of the Food and Drugs Act, as amended, on or about October 17, 1912, from the State of New Hampshire into the State of Massachusetts, of a quantity of an article labeled in part, "Constitutional Tonic Catarrh Remedy," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the sample to be a hydroalcoholic solution of ammonia, containing a trace of alkaloid and oil of lavender.

Misbranding of the article was alleged in the information for the reason that it contained 7.4 per cent of alcohol by volume, and the package failed to bear a statement on the labels of the bottles and cartons of the quantity or proportion of alcohol contained therein. Misbranding was alleged in substance for the further reason that certain statements appearing on the labels of the article, and included in the circular or pamphlet accompanying it, falsely and fraudulently represented it as the most efficacious and reliable remedy in the world for the relief and permanent cure of catarrh, deafness, consumptive tendencies, neuralgia, headache, and asthma, as a cure for erysipelas and rheumatism, and as a preventive of consumption, when, in truth and in fact, it was not.

On December 29, 1915, the defendant Littlefield entered a plea of guilty to the information, and the court imposed a fine of $50 and costs. The information was nolle prossed as to the three defendants Clarke.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4853. Misbranding of "Barnes' Croup Grease." U. S. * * * v. The National Chemical Co., a corporation. Plea of guilty. Fine, $1 and costs. (F. & D. No. 6475. I. S. No. 11208–e.)

On August 2, 1915, the United States attorney for the District of Kansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the National Chemical Co., a corporation, Caney, Kans., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about March 10, 1913, from the State of Kansas into the State of Missouri, of a quantity of an article labeled in part, "Barnes' Croup Grease," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Nonvolatile solids at 100° C. (a solid fat) (per cent)	83.60
Volatile matter (consisting of turpentine and camphor) (per cent)	16.40
Ash: None.	
Index of refraction of nonvolatile solids at 60° C	1.4530
Iodin number of nonvolatile fat	51.8

This preparation consists of lard and about 16 per cent of turpentine and camphor.

Misbranding of the article was alleged in the information for the reason that certain statements appearing on its label, and included in the circular or pamphlet accompanying it, falsely and fraudulently represented it as a preventive of pneumonia and diphtheria, as a remedy for pneumonia, and as a cure for membranous croup and for colds, when, in truth and in fact, it was not.

On November 8, 1915, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $1 and costs.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4854. Adulteration and misbranding of cream. U. S. * * * v. John Christensen, trading as Star Creamery Co. Plea of guilty. Fine, $10 and costs. (F. & D. No. 6495. I. S. No. 225-h.)

On August 5, 1915, the United States attorney for the District of Kansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against John Christensen, trading as Star Creamery Co., Tonganoxie, Kans., alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about July 21, 1913, from the State of Kansas into the State of Missouri, of a quantity of cream which was adulterated and misbranded. The article was labeled: (On tag) "Return Empty To Star Creamery Company Tonganoxie, Kansas." (On reverse side of tag) "K. C. Mo. 83 # 45.0."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it contained 37 per cent fat, by the Babcock test.

Adulteration of the article was alleged in the information, for the reason that a valuable constituent thereof, to wit, butter fat, had been in part abstracted.

Misbranding was alleged for the reason that the statement, to wit, "45.0," borne on the tag attached to the can containing the article, was false and misleading, in that it represented, according to the custom and understanding of the trade, that the article contained 45 per cent of butter fat; and for the further reason that the article was labeled "45.0" so as to deceive and mislead the purchaser into the belief that said article as aforesaid contained 45 per cent of butter fat, whereas, in truth and in fact, it did not, but did contain a less amount, to wit, 37 per cent.

On October 6, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10 and costs.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4855. Adulteration and misbranding of black pepper. U. S. * * * v. 95 Boxes of Ground Black Pepper. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D No. 6504. I. S. No. 12000–k. S. No. C–213.)

On or about May 5, 1915, the United States attorney for the Eastern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 95 boxes, more or less, of ground black pepper remaining unsold in the original unbroken packages at Beaumont, Tex., alleging that the article had been shipped by the Thomson & Taylor Spice Co., Chicago, Ill., and transported from the State of Illinois into the State of Texas, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled: "Regro Brand. Strictly Pure Pepper Packed for the T. S. Reed Grocery Company, Beaumont, Texas."

Adulteration of the article was alleged in the libel for the reason that pepper shells had been mixed and packed therewith so as to reduce and lower and injuriously affect its quality and strength, and had been substituted in part for the ground black pepper.

Misbranding was alleged for the reason that each of the boxes was labeled and branded "Regro Brand. Strictly Pure Pepper Packed for the T. S. Reed Grocery Company, Beaumont, Texas," when, in truth and in fact, the boxes did not contain strictly pure pepper, but the article consisted largely of pepper shells added to the said ground black pepper, and the label was therefore false and misleading. It was further alleged that the article was falsely branded for the reason that it was branded "Strictly Pure Pepper," when, in truth and in fact, it was an imitation of strictly pure pepper; and in that the label "Strictly Pure Pepper" was intended to deceive and mislead the purchaser for the reason that the article was not strictly pure pepper, but was a product, to which had been added pepper shells.

On April 20, 1916, the said Thomson & Taylor Spice Co., claimant, having filed its answer and claim, admitting the allegations in the libel, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be delivered to said claimant for reshipment to its place of business in Chicago, Ill., the costs of the proceedings having been paid by it, and bond in the sum of $500 having been tendered by it, in conformity with section 10 of the act.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4856. Adulteration of beans. U. S. * * * v. 45 Cases of Beans. Default decree of condemnation, forfeiture, and destruction. (F. & L. No. 6512. I. S. Nos. 3773–k, 3774–k. S. No. E–263.)

On May 7, 1915, the United States attorney for the Eastern District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 45 cases, each containing four dozen No. 1 cans, of beans, remaining unsold in the original unbroken packages at Norfolk, Va., alleging that the article had been shipped, on or about March 6, 1915, by the Cooke-Shanawolf Co., Baltimore, Md., and transported from the State of Maryland into the State of Virginia, and charging adulteration in violation of the Food and Drugs Act. The cans were labeled, among other things: "Traveler Brand Beans in Tomato Sauce, Contents 10 oz., packed by Cooke-Shanawolf Company, Baltimore, Md."

Adulteration of the article was alleged in the libel for the reason that it consisted, in whole or in part, of a filthy, decomposed, or putrid vegetable substance.

On June 15, 1916, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4857. Adulteration and misbranding of vinegar. U. S. * * * v. 55 Barrels of Vinegar. Product ordered released on bond. (F. & D. No. 6545. I. S. No. 3769–k. S. No. E–273.)

On May 18, 1915, the United States attorney for the Eastern District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 55 barrels of vinegar, remaining unsold in the original unbroken packages at Norfolk, Va., alleging that the article had been shipped by Harrison & Co., Hightstown, N. J., on or about February 2, 1915, and transported from the State of New Jersey into the State of Virginia, and charging adulteration and misbranding in violation of the Food and Drugs Act. The barrels containing the article were labeled: "Harrison & Co. Standard Apple Vinegar, New York."

Adulteration of the article was alleged in the libel for the reason that the same had been mixed and packed with a certain substance, to wit, water, so as to reduce and lower and injuriously affect its quality and strength; and for the further reason that a certain substance, to wit, water, had been substituted in part for vinegar.

Misbranding was alleged for the reason that the labels on the barrels were false and misleading in that they did not contain an accurate statement of the contents thereof.

On June 22, 1916, E. L. Woodard, Norfolk, Va., claimant, having paid all of the costs of the proceedings and filed bond in the sum of $500, in conformity with section 10 of the act, conditioned in part that the vinegar should properly be relabeled and not sold in violation of law, State or Federal, it was ordered by the court that the product should be released, and that the case should be stricken from the docket.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4858. Misbranding and alleged adulteration of "Henk Waukesha Mineral Spring Water." U. S. * * * v. Margaret K. Henk et al. (Henk Mineral Spring Co.). Plea of guilty as to count 1 of the information. Fine, $125. Second and third counts of information nolle prossed. (F. & D. No. 6576. I. S. No. 4019-h.)

On December 14, 1915, the United States attorney for the Eastern District of Wisconsin, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Margaret K. Henk, Arthur W. Henk, Emma Henk, Clarence E. Henk, and Mabel Henk, copartners, trading under the name of Henk Mineral Spring Co., Waukesha, Wis., alleging shipment by said defendants, in violation of the Food and Drugs Act, as amended, on or about August 29, 1913, from the State of Wisconsin into the State of Illinois, of a quantity of "Henk Waukesha Mineral Spring Water," which was misbranded and alleged to have been adulterated. The article was labeled: (On bottle) "Henk Waukesha Mineral Spring Water" (Representation of woman and chariot race) "Henk The Water of Merit As a table water it is refreshing and delicious, quenching thirst when ordinary waters fail. As a medicinal water it is a most effective remedy for all kidney ailments, Bright's Disease in its incipiency and general disorder of the organic system. Free from organic matter. Gustave Bode, A'n'l. Chemist, Milwaukee, Wis. Henk Mineral Spring Co. Waukesha, Wis. U. S. A. Carbonated & Bottled only at the Spring. All corks branded Henk." (On neck label) "Henk Waukesha."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results, expressed as milligrams per liter:

IONS.

Sulphuric acid (SO_4)	106.0
Bicarbonic acid (HCO_3)	502.0
Nitric acid (NO_3)	9.5
Chlorin (Cl)	920.0
Calcium (Ca)	95.0
Magnesium (Mg)	47.7
Sodium (Na) by difference	640.8
	2321.

Artificially carbonated.

HYPOTHETICAL COMBINATIONS.

Sodium nitrate ($NaNO_3$)	13.2
Sodium chlorid (NaCl)	1516.7
Sodium sulphate (Na_2SO_4)	125.5
Magnesium sulphate ($MgSO_4$)	26.4
Magnesium bicarbonate ($Mg(HCO_3)_2$)	254.6
Calcium bicarbonate ($Ca(HCO_3)_2$)	384.6
	2321.

Adulteration of the article was alleged in the second count of the information for the reason that an article containing added sodium chlorid and added carbon dioxid in quantities not present in Waukesha mineral spring water in its natural condition had been substituted, in whole or in part, for genuine Waukesha mineral spring water, which the article purported to be.

Misbranding of the article, considered as a drug, was alleged in the first count of the information for the reason that the following statement regarding the

therapeutic or curative effects thereof, appearing on the label aforesaid, to wit, "* * * it is a most effective remedy for all kidney ailments, Bright's Disease in its incipiency * * *," was false and fraudulent in that the same was applied to the article knowingly and in reckless and wanton disregard of its truth or falsity, so as to represent falsely and fraudulently to the purchasers thereof, and create in the minds of purchasers thereof the impression and belief, that it was, in whole or in part, composed of, or contained, ingredients or medicinal agents effective, among other things, as a remedy for all kidney ailments and for Bright's disease in its incipiency, when, in truth and in fact, it was not, in whole or in part, composed of, and did not contain, ingredients or medicinal agents effective, among other things, as a remedy for all kidney ailments or as a remedy for Bright's disease in its incipiency, or at any stage. Misbranding of the article, considered as a food, was alleged in the third count of the information for the reason that the statements, to wit, "Waukesha Mineral Spring Water" and "Carbonated and bottled only at the spring," borne on the label, were false and misleading in that they represented that the article was mineral spring water bottled in its natural condition as taken from the Waukesha Mineral Spring; and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it was mineral spring water bottled in its natural condition as taken from the Waukesha Mineral Spring, whereas, in truth and in fact, it was not, but was an article containing added sodium chlorid and added carbon dioxid in quantities not present in Waukesha mineral spring water in its natural condition.

On May 11, 1916, pleas of guilty were entered on behalf of defendants as to the first count of the information, and the court imposed a fine of $25 on each defendant, making an aggregate of $125. The second and third counts of the information were nolle prossed.

CARL VROOMAN, *Acting Secretary of Agriculture.*

3609—17——2

4859. Misbranding of "Cure of Pain Dr. A. Coyle's Celebrated Liniment." U. S. * * * v. Allen F. McCord, trading as the Dr. A. Coyle Medicine Co. Plea of guilty. Fine, $10 and costs. (F. & D. No. 6577. I. S. No. 6345–h.)

On January 19, 1916, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Allen F. McCord, trading as the Dr. A. Coyle Medicine Co., St. Louis, Mo., alleging shipment by said defendant, in violation of the Food and Drugs Act, as amended, on or about June 13, 1913, from the State of Missouri into the State of Illinois, of a quantity of an article labeled in part, "The Cure of Pain Dr. A. Coyle's Celebrated Liniment," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that the product is essentially an alcoholic solution of camphor, turpentine, methyl salicylate, ammonia, oleoresin of capsicum, chloroform, a small amount of an unidentified alkaloid, and an unidentified volatile oil; hydrastis and myrrh indicated.

Misbranding of the article was alleged in substance in the information for the reason that certain statements, appearing on its label and included in the circular or pamphlet accompanying it, falsely and fraudulently represented it as effective for the cure of pain; and as a remedy for the relief of pleurisy, croup, dysentery, cholera, and paralysis; as a cure for rheumatism; as a remedy for inflammation of the stomach, liver, lungs, throat, kidneys, and bowels, and for diphtheria, quinsy, scarlet fever, and whooping cough; and as a cure for tumors, colic, poll evil, ringbone, farcy, bighead, bots, founders, spavin, splint, and windgall, when, in truth and in fact, it was not.

On April 17, 1916, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10 and costs.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4860. Misbranding of "S. B. Cough and Consumption Remedy." U. S. * * * v. Blumauer-Frank Drug Co., a corporation. Plea of guilty. Fine, $50. (F. & D. No. 6586. I. S. No. 3097–h.)

On October 14, 1915, the United States attorney for the District of Oregon, acting upon a report by the Secretary of Agriculture filed in the District Court of the United States for said district an information against the Blumauer-Frank Drug Co., a corporation, Portland, Oreg., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about August 19, 1913, from the State of Oregon into the State of California, of a quantity of an article, labeled in part, "S. B. Cough and Consumption Remedy," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that the product was essentially a hydroalcoholic solution of drug extractives carrying umbelliferone, sugars, oil of tar, and color.

Misbranding of the article was alleged in substance in the information for the reason that certain statements appearing on its label falsely and fraudulently represented it as a remedy for consumption, whooping cough, and influenza, and as a preventive of consumption, when, in truth and in fact, it was not.

On May 6, 1916, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $50.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4861. Adulteration of milk. U. S. * * * v. John Dalrymple. Plea of nolo contendere. Fine, $25 and costs. (F. & D. No. 6604. I. S. Nos. 1553–h, 1565–h, 1566–h, 1567–h, 1568–h, 1569–h, 1570–h, 1571–h, 1572–h, 6904–h, 6913–h, 1551–h, 1555–h, 1561–h, 1552–h, 1557–h, 1558–h, 1559–h, 1560–h 1562–h, 1564–h.)

On October 18, 1915, the United States attorney for the Middle District of Pennsylvania, acting upon a request by the Secretary of Agriculture, filed in the District Court of the United States for said district an informaion against John Dalrymple, New Albany, Pa., alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about September 26, 1913, from the State of Pennsylvania into the State of New Jersey, of quantities of milk which was adulterated.

Bacteriological examination of samples of the article by the Bureau of Chemistry of this department, showing certain kinds and excessive numbers of organisms in the samples, indicated a filthy product. Analysis of samples of the article by said bureau indicated that part of the fat had been removed from the milk.

Adulteration of the article in three of the consignments was alleged in the information for the reason that a valuable constituent thereof, to wit, butter fat, had been in part removed therefrom. Adulteration in two other consignments was alleged for the reason that a valuable constituent thereof, to wit, butter fat, had been in part abstracted therefrom; and for the further reason that the article consisted, in whole or in part, of a filthy, putrid, and decomposed animal substance. Adulteration of the article shipped to five consignees was alleged for the reason that it consisted, in whole or in part, of a filthy, putrid, and decomposed animal substance.

On October 18, 1915, the defendant entered a plea of nolo contendere to the information, and the court imposed a fine of $25 and costs.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4862. Alleged misbranding of "Clay's Sure Cure." U. S. * * * v. Edward J. Kieffer, doing business as Edward J. Kieffer & Son. Tried to the court and a jury. Verdict of acquittal. (F. & D. No. 6608. I. S. No. 10804–e.)

On December 14, 1915, the United States attorney for the Southern District of Georgia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Edward J. Kieffer, doing business as Edward J. Kieffer & Son, Savannah, Ga., alleging shipment by said defendant, in violation of the Food and Drugs Act, as amended, on or about March 8, 1913, from the State of Georgia into the State of South Carolina, of a quantity of an article, labeled in part, "Clay's Sure Cure," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the product to be essentially a hydroalcoholic solution, containing 9.3 per cent of alcohol by volume, 25.3 grams per 100 cc of solids, 16.6 grams per 100 cc of sucrose, and 5.8 grams per 100 cc of potassium iodid, colchicine, nitrite, sarsaparilla, licorice, and small amounts of ammonium salt; bicarbonate chlorate, salicylic acid, and salicylates were absent.

Misbranding of the article was alleged, in substance, in the information for the reason that certain statements appearing on its label falsely and fraudulently represented it as a sure cure for gout and rheumatism, and as a remedy for gout and rheumatism in all its forms, when, in truth and in fact, it was not.

On March 10, 1916, the case having come on for trial before the court and a jury, after the submission of evidence and arguments by counsel, the case was given to the jury, which, after due deliberation, returned a verdict of not guilty.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4863. Adulteration and misbranding of vinegar. U. S. * * * v. 500 Barrels of Vinegar. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. No. 6609. I. S. No. 14138-k. S. No. C-230.)

On June 14, 1915, the United States attorney for the District of Minnesota, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 500 barrels of vinegar, remaining unsold in the original unbroken packages at St. Paul, Minn., alleging that the article had been shipped between October 9 and 12, 1914, by R. Hughes & Co., Middleport, N. Y., and transported from the State of New York into the State of Minnesota, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled: "R. M. Hughes & Co. Pure Apple Cider Vinegar. Diluted to 4½ acetic strength, serial number 26475. Louisville, Ky."

Adulteration of the article was alleged in the libel for the reason that substances had been mixed with said vinegar so as to reduce and lower its quality and strength; and, further, that substances had been substituted in part for vinegar in that a dilute solution of acetic acid or distilled vinegar and a product high in reducing sugars and foreign mineral matter had been mixed and substituted with and in said vinegar, in violation of paragraphs 1 and 2 of section 7 of the Food and Drugs Act.

Misbranding was alleged for the reason that the article was an imitation of, and offered for sale under, the distinctive name of another article, to wit, cider vinegar, and was labeled and branded as aforesaid so as to deceive and mislead the purchaser thereof, in that it was a product artificially prepared, mixed, and compounded so as to resemble and purport to be a genuine food article, to wit, cider vinegar, but added to and intermixed therein was a dilute solution of acetic acid or distilled vinegar, and a product high in reducing sugars and foreign mineral matter as aforesaid.

On June 5, 1916, the said R. M. Hughes and Co., claimant, having consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be redelivered to said claimant upon payment of the cost of the proceedings and the execution of bond in the sum of $200, in conformity with section 10 of the act.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4864. Misbranding of "Aphro Lymphatic Compound." U. S. * * * v. National Animal Products Co., a corporation. Plea of guilty. Fine, $100 and costs. (F. & D. No. 6611. I. S. No. 3280–h.)

On December 30, 1915, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the National Animal Products Co., a corporation, Chicago, Ill., alleging shipments by said company, in violation of the Food and Drugs Act, as amended, on or about November 1, 1913, from the State of Illinois into the State of Washington, of a quantity of "Aphro Lymphatic Compound" which was misbranded. The article was labeled: (On bottle) "Directions One Capsule Three Times a Day After Meals National Animal Products Co." (On wrapper) "Aphro Lymphatic Compound The Great Restorative For Lost Vitality For Men and Women Price $2.00 Per Bottle. Distributed only by The National Animal Products Co. 407 Wells Street Chicago, Ill. Aphro Lymphatic Compound is a fine blood and nerve tonic and is indicated in all cases of lost vitality, loss of memory, irritability, depression, sleeplessness due to nervous debility, melancholy, neurasthenia and all nervous disorders. Aphro Lymphatic Compound is unequaled as a general tonic and rejuvenator for men and women. Guaranteed by the National Animal Products Co., under the Food and Drugs Act of June 30, 1906." The leaflet accompanying the article included, among other things, the following statements: "Aphro Lymphatic Compound A new remedy originated after many years of experimenting. Different from any other product on the market. A combination of highly efficacious remedies obtained from the animal and vegetable kingdoms. In this preparation we have the most efficacious remedies known to medical science for the treatment of weakened genital organs. If you have disobeyed the laws of nature and you are a sufferer, this preparation taken according to directions, will afford you prompt relief. To those who are taking the treatment, we would advise while under the treatment to be very moderate in their habits and avoid the use of intoxicating liquors. The following directions will serve for those suffering from the following conditions: Varicocele, Prostatitis and allied diseases, take one capsule three times a day after meals; bathe the testicles and surrounding parts in salt water, one-half teacup of common salt to one quart of water, morning and evening; eat plain diet and keep bowels open. To those who are suffering from Neurasthenia, Melancholia, Sleeplessness, Nervous Debility, Irritability, Loss of Memory, Seminal Weakness, Lost Vitality, Lost Manhood, etc., take one capsule three times a day. Keep the bowels open. Take salt hand bath upon arising."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that the article consists of a gelatin capsule containing cottonseed oil and a pill containing iron, calcium, sulphates, carbonates, nitrogenous and fatty material, together with small amounts of phosphates and alkaloids.

Misbranding of the article was alleged in the information for the reason that the following statements regarding the therapeutic or curative effects thereof, appearing on the labels aforesaid, to wit, on wrapper, "The Great Restorative for Lost Vitality * * * indicated in all cases of lost vitality, * * *" and included in the leaflet aforesaid, to wit, "Aphro Lymphatic Compound A new remedy * * * A combination of highly efficacious remedies * * * will serve for those suffering from * * * Varicocele, Prostatitis * * * Lost Vitality, * * *," were false and fraudulent in this, that the same were applied to said article knowingly, and in reckless and wanton disregard of their truth and falsity, so as to represent falsely and fraudu-

lently to the purchasers thereof, and create in the minds of purchasers thereof the impression and belief that it was, in whole or part, composed of, or contained, ingredients or medicinal agents effective, among other things, as a restorative of lost vitality and as a remedy for varicocele, prostatitis, and lost vitality when, in truth and in fact, it was not, in whole or in part, composed of, and did not contain, such ingredients or medicinal agents.

On May 13, 1916, the defendant company entered a plea of guilty to the information, and the case was taken under advisement. On July 21, 1916, the court imposed a fine of $100 and costs on the foregoing plea.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4865. Adulteration of pork and beans. U. S. * * * v. 943 Cases of Canned Pork and Beans. Consent decree of condemnation and forfeiture. Product ordered sold under bond. (F. & D. Nos. 6622, 6623, 6624. I. S. Nos. 14300–k, 15801–k, 15802–k, 15803–k, 15804–k, 15805–k, 15806–k, 15807–k. S. No. C–250.)

On June 18, 1915, the United States attorney for the Middle District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 943 cases of canned pork and beans remaining unsold in the original unbroken packages at Nashville, Tenn., alleging that the article had been shipped on March 29, 1915, by the Eavey Packing Co., Xenia, Ohio, and transported from the State of Ohio into the State of Tennessee, and charging adulteration in violation of the Food and Drugs Act. Two hundred and thirty-five of the cases were labeled: "Two Doz. No. 2¼ Sunburst Pork and Beans with Tomato Sauce." The cans in this case were labeled: "Sunburst Brand Pork and Beans with Tomato Sauce" ("contents 1 lb, 14 oz" crossed out and stamped on label "1 lb, 12 Oz."). Eighty-eight of the cases and the cans therein were labeled: "Sunburst Brand Pork and Beans with Tomato Sauce" ("contents 10 Oz." crossed out and stamped in red "contents 8 oz."). One hundred and sixty-nine cases and the cans therein were labeled: "Sailing Brand Pork and Beans with Tomato Sauce, contents 1 Lb. 12 Oz." Thirty-two of the cases and the cans therein were labeled: "Sailing Brand Pork and Beans with Tomato Sauce, contents 8 Oz." Seventy-two of the cases and cans contained therein were labeled: "Snowman's Brand Pork and Beans with Tomato Sauce, contents 1 lb. 12 oz". Sixteen of the cases and the cans contained therein were labeled: "Snowman Brand Pork and Beans with Tomato Sauce, contents 8 oz." One hundred and fifty nine of the cases and the cans contained therein were labeled: "Our Favorite Brand Pork and Beans with Tomato Sauce, guaranteed to comply with all Pure Food laws, contents 1 lb, 12 oz." Sixty-seven of the cases and the cans therein were labeled: "Our Favorite Brand Pork and Beans with Tomato Sauce, contents 8 oz." Thirty of the cases were labeled: "# 0 'King Bee' beans." Fifty-five of the cases were labeled: "2¼ 'King Bee' beans."

Adulteration of the article was alleged in the libel for the reason that it consisted, in whole or in part, of a filthy, decomposed, or putrid vegetable substance.

On June 28, 1916, the said Eavey Packing Co., having claimed the article, but having made no answer or defense to the libel, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal, and that the claimant company should be assessed with all the costs of the proceedings. On July 14, 1916, the former decree was set aside, and it was ordered by the court that the product might be sold by the United States marshal, and that the purchaser should give bond in the sum of $500, conditioned that the product should be used solely for the purpose of food for hogs.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4866. Adulteration and misbranding of pepper. U. S. v. 43 Boxes of Pepper. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 6631. I. S. No. 3149-k. S. No. E-294.)

On June 26, 1915, the United States attorney for the Eastern District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 43 boxes, each containing 10 pounds of pepper, remaining in the original unbroken packages at Norfolk, Va., alleging that the article had been shipped, on or about March 9, 1915, by Parrish Bros., Inc., Baltimore, Md., and transported from the State of Maryland into the State of Virginia, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled: "No. 377, guaranteed by Parrish Bros., Inc., Baltimore, Md. The spice contained in this package is guaranteed to be absolutely pure. Packed for the Southern Distributing Co., Wholesale Grocers, Norfolk, Va., Spice Pepper."

Adulteration of the article was alleged in the libel for the reason that a certain substance, to wit, pepper shells, had been mixed and packed with the pepper so as to reduce and lower and injuriously affect its quality and strength, and had been substituted in part for pepper.

Misbranding was alleged for the reason that the labels upon the boxes were false and misleading in that said labels stated and represented that the pepper was spice pepper, when, in truth and in fact, it was pepper and pepper shells. Misbranding was alleged for the further reason that the labels on the boxes stated that the contents thereof were spice pepper, when, in truth and in fact, the boxes contained an imitation of pepper, to wit, pepper mixed with pepper shells.

On June 15, 1916, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4867. Adulteration and misbranding of pepper. U. S. * * * v. 768 Retail Packages of Pepper. Product ordered released on bond. (F. & D. No. 6633. I. S. No. 2821–k. S. No. E–312.)

On June 28, 1915, the United States attorney for the Middle District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 16 cartons, each containing 4 dozen retail packages, of pepper, remaining unsold in the original unbroken packages at Hazleton, Pa., alleging that the article had been shipped by Parrish Bros., Baltimore, Md., and transported from the State of Maryland into the State of Pennsylvania, the shipment having been received by the consignee on or about March 4, 1915, and charging adulteration and misbranding in violation of the Food and Drugs Act. The cartons were labeled (in part: "Strictly Pure Pepper six lbs. 1/4 Cartons—Parrish Brothers (Inc.), Baltimore, Md., John H. Goeser and Company, Hazleton, Pa." The retail packages were labeled in part: "Anthracite Brand, pure spices, pepper, John H. Goeser and Company, Danville, Hazleton, Tamaqua, Pa. distributors—strictly pure spices—4 ounces—No. 377—guaranteed by Parrish Bros. Inc. Baltimore, Md. under the Food and Drugs Act June 30, 1906."

Adulteration of the article was alleged in the libel for the reason that a certain substance, to wit, pepper shells, had been mixed and packed therewith so as to reduce and lower its quality and strength, and had been, wholly or in part, substituted for pepper.

Misbranding was alleged, in substance, for the reason that the statement of contents on the cartons and shipping packages were false and misleading, and for the further reason that the article was labeled and branded so as to mislead and deceive the purchaser in that it purported to be pure pepper, when, in truth and in fact, it was not wholly and entirely pure pepper.

On August 18, 1915, bond in the sum of $500 having been filed by the said Parrish Bros., conditioned that said claimant would not dispose of, or attempt to dispose of, the product contrary to the provisions of the Food and Drugs Act, it was ordered by the court that the United States marshal should turn the product over to said claimant to be disposed of in accordance with the conditions set out in the bond.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4868. Misbranding of "Barlow's Tablets, a Ready Cure." U. S. * * * v. Edwin B. Barlow, trading as E. B. Barlow & Co. Plea of guilty. Fine, $25. (F. & D. No. 6649. I. S. No. 9547-h.)

On December 15, 1915, the United States attorney for the Northern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Edwin B. Barlow, trading as E. B. Barlow & Co., Binghamton, N. Y., alleging shipment by said defendant, in violation of the Food and Drugs Act, as amended, on or about December 24, 1913, from the State of New York into the State of Pennsylvania, of a quantity of an article, labeled in part, "Barlow's Tablets, a Ready Cure," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Ash (per cent)	8.1
Acetanilid (per cent)	5.2
Quinine sulphate (per cent)	2.4
Sucrose (Clerget) (per cent)	73.9
Acid-insoluble ash (talc) (per cent)	5.0
Acetanilid (gram per tablet)	0.024
Quinine sulphate (gram per tablet)	0.011
Phenolphthalein (per cent)	2.3
Phenolphthalein (gram per tablet)	0.011

Misbranding of the article was alleged in substance in the information for the reason that certain statements appearing on its label falsely and fraudulently represented it as a cure for general derangements of the system caused by sudden colds and chills attended by fever, headache, dyspepsia, colds and fever, fever and neuralgia, coughs, all affections of the throat, sun cholera, and all affections of the liver, when, in truth and in fact, it was not. Misbranding was alleged for the further reason that the statement in prominent type, to wit, "Barlow's Tablets Laxative Phospho Quinine," borne on the large box containing the small boxes aforesaid, and the statement in prominent type, to wit, "Barlow's Cold and Fever Tablets Laxative Phospho Quinine," borne on the small boxes containing the tablets, were false and misleading, in that they represented that a phosphate and quinine were the principal active medicinal ingredients of the tablets, whereas, in truth and in fact, a phosphate and quinine were not the principal active medicinal ingredients of said tablets, but the principal active medicinal ingredient of said tablets was, to wit, acetanilid, said tablets containing more than 5 per cent of acetanilid, whereas they contained only a trace of phosphate and less than 2½ per cent of quinine sulphate.

On December 16, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $25.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4869. Misbranding of "White Stone Lithia Water." U. S. * * * v. Lloyd C. Dillard et al. Plea of guilty. Fine, $10. (F. & D. No. 6711. I. S. No. 8695-h.)

On March 22, 1916, the United States attorney for the Western District of South Carolina, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Lloyd C. Dillard, Spartanburg, S. C.; Bank of Spartanburg, and the Merchants & Farmers' Bank, and the First National Bank, Spartanburg, S. C., alleging shipment by said defendants, in violation of the Food and Drugs Act, as amended, on or about May 8, 1914, from the State of South Carolina into the State of Georgia, of a quantity of an article, labeled in part, "White Stone Lithia Water," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results, expressed as miligrams per liter:

IONS.

Silica (SiO_2)	42.2
Sulphuric acid (SO_4)	194.6
Bicarbonic acid (HCO_3)	78.1
Chlorin (Cl)	3.0
Calcium (Ca)	91.9
Magnesium (Mg)	2.7
Sodium (Na) by difference	14.0
Lithium[1] (Li)	0.0
Total	426.5

HYPOTHETICAL COMBINATIONS.

Sodium chlorid (NaCl)	5.0
Sodium sulphate (Na_2SO_4)	37.1
Magnesium bicarbonate ($Mg(HCO_3)_2$)	16.2
Calcium sulphate ($CaSO_4$)	240.2
Calcium bicarbonate ($Ca(HCO_3)_2$)	85.8
Silica (SiO_2)	42.2
Total	426.5

[1] No weighable amount in 2 liters, about 0.006 mg per liter by spectroscope.

Misbranding of the article was alleged in the information for the reason that the following statement regarding it and the ingredients and substances contained therein, appearing on the label of the bottle containing it, to wit, "White Stone Lithia Water," was false and misleading in that it indicated to the purchasers thereof that the article was lithia water, when, in truth and in fact, it was not. Misbranding of the article, considered as a drug, was alleged in substance for the further reason that certain statements appearing on its label falsely and fraudulently represented it as a cure for all liver, kidney, and bladder troubles, rheumatism, gout, all blood diseases, and indigestion, when, in truth and in fact, it was not.

On April 10, 1916, a plea of guilty having been entered on behalf of the defendants, the court imposed a fine of $10.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4870. Adulteration of so-called cognac type brandy. U. S. * * * v. 1 Barrel of Brandy. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. No. 6718. I. S. No. 7875-k. S. No. W-53.)

On July 12, 1915, the United States attorney for the District of Utah, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 1 barrel of brandy, remaining unsold in the original unbroken package at Salt Lake City, Utah, alleging that the article had been shipped in interstate commerce, on or about June 8, 1915, by Sol Block & Griff, Kansas City, Mo., and transported from the State of Missouri into the State of Utah, and charging adulteration in violation of the Food and Drugs Act. The article was labeled: (On one end of barrel) "Brandy, Sol Block & Griff. Wholesale Liquor Dealers, Sixth District Missouri." (On other end of barrel) "Cognac Type Brandy," the word "Type" being stamped on an eagle design, in small letters, between the words "Cognac" and "Brandy," which appears in large characters.

Adulteration of the article was alleged in the libel for the reason that, while branded "Cognac Type Brandy," neutral spirits, artifically colored, had been mixed and packed with and substituted for cognac type brandy, which the label represented the article to be; that said artificially colored neutral spirits had been mixed and packed with the article so as to reduce, lower, and injuriously affect its quality.

On December 11, 1915, Sol Block and Theodore W. Griff, partners trading under the name of Sol Block & Griff, claimants, having filed their answer and claim, consenting to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be disposed of by sale; provided, however, that upon the execution by claimants of a bond in the sum of $100, conditioned upon the product not being sold or disposed of contrary to the provisions of the act, it should be delivered to claimants.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4871. Misbranding of buckwheat and wheat flour. U. S. * * * v. Don Leon Van Wegen, trading as Eulalia Mills. Plea of guilty. Fine, $5. (F. & D. No. 6727. I. S. No. 2891–h.)

On October 21, 1915, the United States attorney for the Middle District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Don Leon Van Wegen, trading as Eulalia Mills, Coudersport, Pa., alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about December 23, 1913, from the State of Pennsylvania into the State of New York, of a quantity of buckwheat and wheat flour which was misbranded. The article was labeled, in part: (On retail package) "2½ Lbs. Peerless Brand Self-Rising Buckwheat and Wheat Flour Manufactured by Eulalia Mills Coudersport, Penna."

Examination of a sample of the article by the Bureau of Chemistry of this department showed the packages of the same to contain less than 2½ pounds, the average shortage of 12 packages being 8.7 per cent.

Misbranding of the article was alleged in the information for the reason that the statement, to wit, "2½ lbs.," borne on the packages containing the article, was false and misleading in that it represented that the packages contained 2½ pounds; and for the further reason that it was labeled "2½ lbs.," so as to deceive and mislead the purchaser into the belief that the packages contained 2½ pounds, whereas, in truth and in fact, they did not contain 2½ pounds, but contained a less amount.

On January 10, 1916, the defendant entered a plea of guilty to the information, and the court imposed a fine of $5.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4872. Adulteration and misbranding of pepper. U. S. * * * v. 10 Boxes of Pepper. * * * U. S. * * * v. 25 Pails of Pepper. Order of court releasing product on bond. (F. & D. Nos. 6730, 6731. I. S. Nos. 3075-k, 3076-k. S. Nos. E-354, E-355.)

On July 15, 1915, the United States attorney for the Western District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district libels for the seizure and condemnation of 10 ten-pound boxes and 25 ten-pound pails of pepper, remaining unsold in the original unbroken packages at Roanoke, Va., alleging that the article had been shipped on June 30, 1915, by the W. H. Crawford Co., Baltimore, Md., and transported from the State of Maryland into the State of Virginia, and charging adulteration and misbranding in violation of the Food and Drugs Act.

Adulteration of the article was alleged in substance in the libels for the reason that it contained added pepper shells in violation of section 7, paragraphs 1 and 2, under food of the Food and Drugs Act.

Misbranding was alleged for the reason that the article was labeled "Pepper," when in fact it was a mixture of pepper and pepper shells, in violation of section 8, first general paragraph, and paragraph 2, under food of said Food and Drugs Act.

On September 27, 1915, the said W. H. Crawford Co., claimant, having paid the costs of the proceedings and tendered bond, in conformity with section 10 of the act, which bond was approved and accepted by the court, it was ordered that the article should be delivered to said claimant.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4873. Adulteration and misbranding of pepper. U. S. * * * v. 10 Boxes of Pepper. * * * U. S. * * * v. 50 Boxes of Pepper. Order of court releasing product on bond. (F. & D. Nos. 6732, 6733. I. S. Nos. 3078–k, 3079–k. S. Nos. E–357, E–358.)

On July 15, 1915, the United States attorney for the Western District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district libels for the seizure and condemnation of 10 ten-pound boxes and 50 ten-pound boxes of pepper, remaining unsold in the original unbroken packages at Lynchburg, Va., alleging that the article had been shipped by the W. H. Crawford Co., Baltimore, Md., and transported from the State of Maryland into the State of Virginia, and charging adulteration and misbranding in violation of the Food and Drugs Act.

Adulteration of the article was alleged in substance in the libels for the reason that it contained added pepper shells, in violation of section 7, paragraphs 1 and 2 under food, of the Food and Drugs Act.

Misbranding was alleged for the reason that the article was labeled "Pepper," when, in fact, it was a mixture of pepper and pepper shells, in violation of section 8, first general paragraph, and paragraph 2, under food, of said Food and Drugs Act.

On September 27, 1915, the said W. H. Crawford Co., claimant, having paid the costs of the proceedings and tendered bond, in conformity with section 10 of the act, which bond was approved and accepted by the court, it was ordered that the article should be delivered to said claimant.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4874. Adulteration of tomato pulp. U. S. * * * v. 50 Cases of Tomato Pulp. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 6734. I. S. No. 15477-k. S. No. C-276.)

On July 14, 1915, the United States attorney for the Eastern District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 50 cases, each containing 48 cans, of tomato pulp, remaining unsold in the original unbroken packages at New Orleans, La., alleging that the article had been shipped, on or about May 31, 1915, by the Scottsburg Canning Co., Scottsburg, Ind., and transported from the State of Indiana into the State of Louisiana, and charging adulteration in violation of the Food and Drugs Act. The cans were labeled in part: "Old Mammy's Brand Tomato Pulp."

Adulteration of the article was alleged in the libel for the reason that it consisted in part of a filthy, decomposed, and putrid vegetable substance.

On September 22, 1915, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4875. Adulteration and misbranding of brandy. U. S. * * * v. 1 Cask of Brandy. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 6740. I. S. No. 17871–k. S. No. W–55.)

On July 17, 1915, the United States attorney for the District of Utah, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 1 cask of brandy, remaining unsold in the original unbroken package at Salt Lake City, Utah, alleging that the article had been shipped by the Edward Block Distilling & Distributing Co., Kansas City, Mo., and transported from the State of Missouri into the State of Utah, and charging adulteration and misbranding in violation of the Food and Drugs Act. The cask was labeled, on one end, "Cognac Brandy Type," the words "Cognac Brandy" being printed in characters 3 inches high and the word "Type" being printed in letters ½ inch high.

Adulteration of the article was alleged in the libel for the reason that neutral spirits had been mixed and packed with, and substituted for, cognac brandy type, and had been mixed and packed with said brandy so as to reduce and lower and injuriously affect its quality.

Misbranding was alleged for the reason that the cask was labeled so as to deceive and mislead the purchaser in that the label designated the contents thereof "Cognac Brandy Type," whereas, in truth, the cask contained an article to which neutral spirits had been added.

On December 14, 1915, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4876. Adulteration and misbranding of vinegar. U. S. * * * v. Monarch Vinegar Works, a corporation. Plea of guilty. Fine, $50 and costs. (F. & D. No. 6744. I. S. Nos. 5470–e, 8814–h, 8815–h, 9793–e, 11277–e.)

On November 16, 1915, the United States attorney for the Western District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Monarch Vinegar Works, a corporation, Kansas City, Mo., alleging shipment by said company, in violation of the Food and Drugs Act, on or about December 4, 1912, December 4, 1913 (two shipments), and March 31, 1913, from the State of Missouri into the State of Kansas, of quantities of vinegar which were adulterated and misbranded, and the sale by said company, on or about May 24, 1913, under a written guaranty that the article was not adulterated or misbranded within the meaning of the Food and Drugs Act, of a quantity of vinegar which was an adulterated and misbranded article within the meaning of said act, and which said article was afterwards on May 27, 1913, in the identical condition in which it had been received, shipped by the purchaser thereof, from the State of Missouri into the State of Kansas, in further violation of the Food and Drugs Act. The shipment of December 4, 1912, was labeled: "Corn Sugar 85 G. 48."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Glycerin (grams per 100 cc)	0.07
Solids (grams per 100 cc)	0.62
Nonsugar solids (grams per 100 cc)	0.48
Reducing sugar after exaporation (grams per 100 cc)	0.14
Lead precipitate: Very slight.	
Polarization: Too dark to read.	
Ash (grams per 100 cc)	0.06
Total acid (grams per 100 cc)	8.57
Color (degrees, brewer's scale, 0.5 inch)	34.0
Alcohol precipitate: Not dextrinous; flocculent.	

These results show that the product consists largely of either distilled vinegar or dilute acetic acid.

One of the shipments of December 4, 1913, was labeled: "Distributed by The B. C. Twenhofel Mfg. Co., Kansas City Kansas Pure Apple Cider Vinegar 45 Gals. Generator Run"

Analysis of a sample of this article by said Bureau of Chemistry showed the following results:

Glycerin (grams per 100 cc)	0.14
Solids (grams per 100 cc)	1.50
Nonsugar solids (grams per 100 cc)	1.35
Reducing sugar after evaporation (grams per 100 cc)	0.15
Lead precipitate: Fair.	
Polarization	0.0
Ash (grams per 100 cc)	0.25
Total P_2O_5 (mg per 100 cc)	34.0
Total acid (grams per 100 cc)	4.86

These results show that the product consists largely of either distilled vinegar or dilute acetic acid.

The other shipment of December 4, 1913, was labeled: "Distributed by the B. C. Twenhofel Mfg. Co. Pure Sugar Vinegar, 45 gals. Kansas City, Kansas."

Analysis of a sample of this article by said Bureau of Chemistry showed the following results:

Glycerin (grams per 100 cc)	0.06
Solids (grams per 100 cc)	1.36
Nonsugar solids (grams per 100 cc)	1.25
Reducing sugar after evaporation (grams per 100 cc)	0.11
Color (degrees, brewer's scale, 0.5 inch)	60.0
Lead precipitate: Fair.	
Ash (grams per 100 cc)	0.32
Total acid (grams per 100 cc)	4.92
Polarization: Too dark to read.	

These results show that the product consists largely of either distilled vinegar or dilute acetic acid.

The shipment of March 31, 1913, was labeled: "Sugar 60° 47."

Analysis of a sample of this article by said Bureau of Chemistry showed the following results:

Glycerin (grams per 100 cc)	0.12
Solids (grams per 100 cc)	1.78
Nonsugar solids (grams per 100 cc)	1.41
Reduced sugar after evaporation (grams per 100 cc)	0.37
Colors (degrees, brewer's scale, 0.5 inch)	26.0
Lead precipitate: Small amount; flocculent.	
Polarization: Too dark to read.	
Ash (grams per 100 cc)	0.28
Total acid (grams per 100 cc)	5.91

These results show that the product consists largely of either distilled vinegar or dilute acetic acid.

The vinegar sold May 24, 1913, and shipped May 27, 1913, was labeled: "Pure Sugar M-V-W Vinegar Manufactured Bottled and Guaranteed by Monarch Vinegar Works. Kansas City, Mo."

Analysis of a sample of this article by said Bureau of Chemistry showed the following results:

Glycerin (grams per 100 cc)	0.11
Solids (grams per 100 cc)	1.10
Nonsugar solids (grams per 100 cc)	0.85
Reduced sugar after evaporation (grams per 100 cc)	0.25
Color (degrees, brewer's scale 0.5 inch)	19.0
Alcohol (per cent by volume)	0.28
Ash (grams per 100 cc)	0.20
Total acid (grams per 100 cc)	4.86

These results show that the product consists largely of either distilled vinegar or dilute acetic acid.

Adulteration of the article in each shipment, including that portion sold under a guaranty, was alleged in the information for the reason that a substance, to wit, a distilled vinegar or dilute acetic acid, had been substituted, in whole or in part, for corn sugar vinegar (or pure apple cider vinegar, pure sugar vinegar, sugar vinegar, or pure sugar vinegar, as the case might be), which the article purported to be.

Misbranding of the article shipped December 4, 1912, and March 31, 1913, was alleged in the information, for the reason that it was offered for sale and sold under the distinctive name of another article, to wit, corn sugar vinegar

(or sugar vinegar, as the case might be), whereas, in truth and in fact, it was not, but was a product consisting, in whole or in part, of distilled vinegar or dilute acetic acid. Misbranding was alleged for the further reason that the statement, to wit, "Corn sugar 85 G. 48." (or "Sugar 60° 47."), borne on the barrels containing the article, was false and misleading, in that it represented to the trade that the article was genuine corn sugar vinegar (or sugar vinegar, as the case might be), and for the further reason that it was labeled in each instance as aforesaid so as to deceive and mislead the purchaser thereof into the belief that, according to the understanding and custom of the trade, it was genuine corn sugar vinegar (or genuine sugar vinegar, as the case might be), whereas, in truth and in fact, it was not, but was a product consisting, in whole or in part, of distilled vinegar or dilute acetic acid.

Misbranding of the article in the two shipments of December 4, 1913, was alleged for the reason that the statement, to wit, "Pure Apple Cider Vinegar" (or "Pure Sugar Vinegar"), borne on the barrels containing the article, was false and misleading, in that it represented that the article was pure apple cider vinegar (or pure sugar vinegar, as the case might be), and for the further reason that it was labeled "Pure Apple Cider Vinegar" (or "Pure Sugar Vinegar") so as to deceive and mislead the purchaser thereof into the belief that it was pure apple cider vinegar (or pure sugar vinegar, as the case might be), when, in truth and in fact, it was not, but was a product consisting, in whole or in part, of distilled vinegar or dilute acetic acid.

Misbranding of the article sold under a guaranty on May 24, 1913, was alleged for the reason that the statement "Pure Sugar Vinegar," borne on the label attached to each of the bottles containing the article, was false and misleading, in that it represented that the article was pure sugar vinegar; and for the further reason that it was labeled "Pure Sugar Vinegar" so as to deceive and mislead the purchaser into the belief that it was pure sugar vinegar, whereas, in truth and in fact, it was not, but was a product consisting, in whole or in part, of distilled vinegar or dilute acetic acid.

On December 23, 1915, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $50 and costs.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4877. Adulteration of shell peanuts. U. S. * * * v. 350 Bags of Shell Peanuts. Tried to the court and a jury. Verdict for the Government. Motion to set aside verdict granted. Case set for hearing. Order filed discontinuing action and releasing product. (F. & D. No. 6747. I. S. No. 3816–k. S. No. E–360.)

On July 19, 1915, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 350 bags of shell peanuts, remaining unsold in the original unbroken packages at New York, N. Y., alleging that the article had been shipped by the Gwaltney-Bunkley Peanut Co., Smithfield, Va., and transported from the State of Virginia into the State of New York, the shipment having been received on or about July 13, 1915, and charging adulteration in violation of the Food and Drugs Act. The article was labeled: "Gwaltneys Circus Peanuts—J 34."

Adulteration of the article was alleged in the libel for the reason that it consisted in particular [part] of moldy peanuts, 13 per cent; empty shells, 8 per cent; wholly immature shriveled kernels, 40 per cent; partly immature shriveled kernels, 24 per cent.

On July 22, 1915, a claim and stipulation for costs was filed by the said Gwaltney-Bunkley Peanut Co., branch of American Peanut Co., of Norfolk, Va., and on August 16, 1915, the answer of said claimant company was filed.

On October 27, 1915, the case having come on for trial before the court and a jury, after the submission of evidence and arguments by counsel the following charge was delivered to the jury by the court (Mayer, *D. J.*):

Gentlemen of the jury, this case has been extremely interesting to me, and I hope it has been to you. This is an illustration of the useful information that we all get in the court room, opening our eyes to the development of industries in this country concerning which probably most, if not all of us, know very little. It is apparently an important case and deserves at your hands equivalent consideration.

My charge to you must be a little bit technical, because I am dealing with the statutes; and in order that the subject matter may be made clear to you, I desire to sweep away at the outset those questions which you are not to consider. I might content myself with being silent about them but for the fact that, in view of your interest, and in view of the fact that this litigation was a sort of human kind of litigation, even though it deals with inanimate things, I always like to feel that the court should reserve to itself certain questions and permit the jury to pass upon others. It is the duty of the court to take away from the jury any question which resolves itself merely into a question of law and to leave to the jury questions of fact.

This proceeding is technically known as a forfeiture proceeding, in which the Government proceeds by a process that we call a libel or complaint. A libel is the same thing as a complaint in an ordinary litigation. In this litigation the Government is called not the plaintiff, but the libelant; and the parties who claim that these peanuts are their property are called the claimants and not defendants. But this is simply phraseology, and it all amounts to the same thing; so for convenience, and in order not to confuse you, if I use any of these terms I shall speak of the Government as the plaintiff and the owners of these bags of peanuts as the defendants.

The Government proceeds in its libel or complaint upon the theory that two things have taken place here: (1) That the defendants have misbranded their goods; (2) that the defendants within the purview of the act have adulterated their goods. You will have nothing whatever to do with the question of misbranding. That I do not submit to you and for this reason: The pure food law, broadly speaking, dealt with two general propositions. One was to safeguard the health of the public; the other was to prevent deception, where it might very well be that the subject matter contained in the article to be sold was in no manner deleterious. Now, as a simple illustration of misbranding, a man might sell, we will say, Maria Farina Cologne, which is a well-known product made in the city of that name and having that designation of Maria Farina. Now, if he puts out upon the market a liquid of a similar character but not coming from Cologne, and not being the Maria Farina brand, and called

it Cologne of the Maria Farina brand, he would be misbranding that article; and yet that article would do nobody any harm from a physical standpoint. That is an illustration of that part of the statutes that has to do with misbranding.

These goods are sold as Gewaltney's Circus Peanuts. The evidence is uncontradicted that that is the name by which they are known in the trade. It has nothing to do whatever with the name by which the public buys, because there is no evidence of that character in the case. If a man orders, as it is presumed he does, a lot of Gewaltney's Circus Peanuts and he gets the sacks or bags which are here in evidence, he gets precisely what he orders—precisely what is known in the trade and there is no case of misbranding whatsoever; and as there is no evidence of misbranding, or any evidence of attempt to deceive, that part of the case we will not deal with at all.

That brings me to the part of the case with which you would deal, and I would ask your closest attention while I read the statute.

Section 10 of the act says that any article of food, drug, or liquor that is adulterated or misbranded within the meaning of the act, and is being transported from one State, Territory, district, or insular possession to another for sale, or, having been transported, remains unloaded or unsold or in original unbroken packages, or if it be sold or offered for sale in the District of Columbia or insular possessions of the United States or be imported from a foreign country for sale, or if it is intended for export to a foreign country for sale, shall be liable to be proceeded against in any district court of United States in the district where the same is found and seized for confiscation by a process of libel for condemnation.

Under that statute, the Government, taking the position that these peanuts contained in these 350 bags were adulterated within the meaning of the act, seized the 350 bags because the shipment was a shipment in interstate commerce; and they now ask you to render a judgment, the effect of which will be to confiscate all of the 350 bags and all of their contents, so that the Gewaltney concern shall be deprived of the property contained in the 350 bags, the Government taking the position that all of the contents of those bags, whether the peanuts are good or bad, are forfeited to the Government.

Adulterated, under the statute, may mean one of several things. Our popular understanding of adulteration, I think, has been, that you put something into a substance; but Congress went further and provided among other things as follows:

"That for the purposes of this act"—I am reading from section 7, subdivision 6—"an article shall be deemed to be adulterated in the case of food if it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter."

Now, at the very outset of the case, we are met with what I think is rather a novel question in this class of cases.

For instance, suppose a man were to ship, let us say for illustration, in interstate commerce, 10 quarters of lamb in a refrigerator car and the Government were to find one of those that was diseased, within the meaning of this act, and found the other nine absolutely fit in every respect for human food; it can not be that Congress meant that the Government could forfeit the whole 10 of those quarters of lamb simply because 1 happened to be within the condemnation of the act. In a case of that kind, if it were my duty to pass on it, I should say that the one diseased or unfit quarter of lamb was forfeit to the Government, and the remaining nine should still remain the property of the shipper or the consignee as the case might be.

We have here, however, a very curious situation and my attention has not been called by the Government or counsel for the defendant to any analogous case which would either guide you or me. We have here a small nut inclosed in bags, those bags in turn inclosed in sacks, the whole aggregating a great many nuts, speaking individually, and that large total running into some thousands and concededly a certain part thereof are not within the condemnation of the act. Now, there can be no question at all that the mature nuts, or as they were called by some of the witnesses, the sound nuts are not within the condemnation of the act. Further than that, it is my duty to charge you, as a matter of law, that the so-called immature nuts, whether wholly or partly immature, are articles of food not within the condemnation of the statutes; because the evidence is uncontradicted that the immature nuts are fit for

human food; that they do not contain any filthy, decomposed, or putrid vegetable substance; and that the only distinction between the immature nuts, whether wholly or partly immature, and the wholly mature nut is in relative food value, as these experts call it, or relative nutrition value, as we laymen call it.

So that, what your case gets down to is this—that a certain number of these nuts were what is called moldy and a certain number of these nuts were what is called wormy. The highest percentage of both combined testified to by any of the witnesses called is, if my recollection is right, the percentage testified to by Dr. Seeker, who says that he found 10 per cent moldy and wormy; so that, out of the total shipment here, there were 90 per cent which in no manner, shape, or form were in violation of this statute, and I charge you that, as a matter of law, in any event, 90 per cent of the contents of these 250 bags are not subject to forfeit by the Government and the Government must be ordered to return them to the defendants. That is so charged because these articles are separate articles. They are capable of selection, if not in the shell at least after breaking the shell. The details of how they shall be returned is no concern of yours or mine at the moment. But the Government in a case of this kind, where only 10 per cent are complained of, can not, as a matter of law, forfeit 90 per cent of merchandise that is not contrary to the statute. That gets us down to the sole question with which you gentlemen are concerned.

Certain of these peanuts are said to be moldy and wormy, or moldy or wormy; and the witnesses agree as to that. They differ as to percentages and there is no exact figure which will enable anybody to say how many actual peanuts were wormy or moldy. We can not deal with abstractions and therefore we will accept the basis of percentage; and it is for you to say if you should decide against the defendants, what percentage were moldy or wormy. When I say 10 per cent, I do not mean that you should find that 10 per cent were moldy or wormy. I mean that this is the very most that the Government could retain, because some of the witnesses for the defense put the percentage considerably below that. These nuts may be moldy and wormy, either or both, and yet not subject to forfeiture by the Government, unless you find that within the meaning of the statute they were filthy, decomposed or putrid vegetable substance. You are not to be concerned, nor is it any part of your duty, under the statute in this case, as to whether these nuts are better or worse than other nuts; as to whether they are commercially more valuable or not; you are only concerned with determining whether within the meaning of the act, those nuts that are moldy or wormy, or both, are filthy, decomposed, or putrid vegetable substance. If they are, then they are of a character that are deleterious to health, and they come within the purpose of the statute in safeguarding the public health. If they are not, then you must render a verdict for the defendants.

Those words, standing by themselves, can not mean a mere abstraction. The mere fact that something is decomposed, can not of itself subject that article to forfeiture, and this is the reason. You have heard the testimony in this case that there are many articles of food which are decomposed, both from a scientific and a lay standpoint and yet that those articles of food are commonly eaten; and there is not only no evidence that they are harmful but there is evidence from which you may readily conclude they are not harmful; and many of those articles of food are articles that you are familiar with. If this statute were to be construed as meaning that any article which was decomposed, irrespective of its effect upon the public health, could be forfeited to the Government, then logically the Government could forfeit many kinds of cheeses and many kinds of other articles of food, simply because from looking at it from the standpoint of a theory, these articles were technically decomposed, whether you use that word scientifically or in the lay language. Upon the particular facts in this case, confining myself only to this case—and I am not endeavoring to go beyond this case with any general definitions—it must be for you to say whether the so-called wormy or moldy or both peanuts were first, as a matter of fact, filthy; second, as a matter of fact, decomposed; or third, as a matter of fact, putrid, vegetable substance. If you find that they were any one of the three, whether from the evidence in the case their consumption as food may tend to be injurious to health.

Counsel during the trial said that these words were to be construed by their ordinary meaning—not by the meaning that some scientists might give to you—

and counsel is entirely right. Scientists differ a whole lot about definitions. This act was framed in ordinary understandable language, which any man of reasonable education can understand, and these are the definitions that are to govern. While I regret to take up the time, yet the importance of the case requires that I shall read to you from some standard dictionaries the definitions of these words.

In the Standard Dictionary, filthy is defined: Of the nature of or containing filth; dirty; nasty.

Filth—Anything that soils or makes foul; that which is foul or dirty; also the state or quality of being foul, nastiness; dirt.

Decomposed—In a state of decomposition; decayed; rotten.

Decompose—To resolve into constituent parts or elements, as by means of chemical agents or natural decay; especially to cause it to decay or rot; to putrefy; decay; rot.

Putrid—Being in a state of putrefaction; tainted; as putrid flesh.

In the Century Dictionary the definition is substantially the same. I will not take the time to read it. In Webster's New International Dictionary the definitions are also substantially the same. Now, within those definitions, or within that you know to be the ordinary meaning of these three words, were these moldy or wormy nuts filthy or decomposed or putrid? You are not to employ the scientific meaning, if you are satisfied that any scientific definition was given to these words. There is some controversy as to this law point, but with this you are not concerned. I think you have a right in that connection to determine what I said before when you are considering this case—whether the condition of these nuts on the testimony here offered was such as may tend to injure the public health. If you think it was not, and that the evidence does not justify such a finding, you will find for the defendants to the extent of the nuts that come within this category. If you think that they were, you will find for the Government to that extent, and that extent only. You remember the testimony. If I state it incorrectly, you are not to take what I say; you are to take your own recollection of the facts and your own construction of the facts.

It appears that the mold in the nuts in the case at bar and in the case of all peanuts, if these gentlemen are right, does not appear until after the nut leaves the ground; that it is created by moisture conditions, and that that condition may come up at any time if the nuts are shipped in cars where there is moisture, lying on docks where there is moisture, or otherwise where there is moisture.

You will remember that there is no evidence in the case to show the effect upon the human system of these moldy nuts in a roasted peanut. There was some evidence by Dr. Rusby of what he thought about it, but no evidence of any tests of any kind or description to indicate whether or not these moldy nuts were injurious to public health. The witnesses for the defense insisted that these nuts did not come within any of these words by way of definition, and I shall not spend any time reviewing their testimony.

In regard to the wormy nuts there was no evidence in the case of any scientific tests as to the effect of those nuts or what those nuts may do in the way of injury to health if taken internally. The defendants insist that within these definitions these nuts are not in contravention of the statutes. The plaintiff's position is based upon the proposition that they are.

Finally, I may say to you that the burden of proof in this case is on the Government; that the Government is bound to satisfy you by a preponderance of evidence. That does not mean the number of witnesses, but means the quality of witnesses; the impression that they create upon your minds and the way their testimony impresses you. If, in your opinion, the evidence upon the one question submitted to you upon the vital question, is evenly balanced, you must render a verdict for the defendants. If, however, the evidence of the Government overbalances by ever so little that of the defendants, then they have sustained the preponderance and there must be a verdict for the Government. I therefore submit the matter to you, requesting that you return a verdict in which you shall say either that the verdict shall be for the defendants, namely, the claimant, or the owners of the merchandise; or, if you find for the Government, that you state in your verdict what percentage of the goods contained in these 250 bags the Government is entitled to forfeit and confiscate.

I have been asked by counsel for the Government to charge you in several respects. As to request No. 1, I am of the opinion that I have covered all that is necessary.

As to request No. 2, I decline to charge as requested and think that what I have said covers the subject matter so far as applicable.

As to request No. 3, in view of the fact that the question at issue is whether the peanuts are adulterated it seems to me that the third request to charge would only tend to confuse, and I decline to charge as phrased.

I would charge No. 4. The fact that it is not possible to detect moldy and wormy peanuts without breaking open the shells does not constitute a defense to a proceeding of this nature, provided the jury find as a fact that peanuts of that character are a filthy, decomposed, or putrid vegetable product. But I confine that construction to the particular peanuts which, under my charge, the jury have to decide were or were not filthy, decomposed, or putrid vegetable substance.

I decline to charge No. 5.

Mr. BARNES. I take an exception to your honor's refusal to charge as requested and your honor's qualification on charge No. 4, and I ask that the requests be given to the stenographer to be incorporated. I also except to that portion of your honor's charge that takes from the jury the question of misbranding, and request to go to the jury on whether the placing of this article in bags labeled "Circus Peanuts" is or is not misbranding within regulation No. 26 of the Department of Agriculture and within the meaning of section 8 of the act in the case of "Food," particularly the second and fourth subdivisions.

The COURT. I decline to allow that question to go to the jury.

Mr. BARNES. I take an exception. I also except to that portion of your honor's charge which stated that if a portion only of the shipment was within the prohibition of the act, that the entire shipment is not subject to condemnation or forfeiture; and I further except to that portion of your honor's charge which stated that 90 per cent of the product seized is not subject to condemnation or forfeiture and must be returned to claimant. Of course, I object to the general principle of all—I claim the whole amount is forfeited. If my recollection is correct, Dr. Read testified she found 12 per cent.

Mr. MENKEN. That testimony was ruled out.

The COURT. Perhaps it is better to put it this way. I will charge that not to exceed 10 per cent of the shipment is the subject in controversy now, within the instructions I have laid down.

Mr. BARNES. I take an exception to the charge as amended. I also except to that portion of the charge that in addition to finding that the article is a filthy, decomposed or putrid vegetable substance, it is necessary for the jury to find that it is injurious to health.

The COURT. You may have an exception.

Mr. BARNES. I also except to the form of the verdict that your honor has directed.

Mr. MENKEN. I except to your honor's charging the Government's request No. 4. If your honor please, I ask that when the jury retire, they be instructed that they can send for such samples as they want. I particularly want them to take some of the roasted peanuts and some of the unroasted peanuts.

The COURT. Yes; that's all right. I think I should say this, although I am quite sure the jury remembers about it; and that is, to direct your attention to the testimony of the witnesses as to the destruction of bacteria by the roasting of these nuts and as to the uncontradicted testimony in this case that these nuts are roasted and that they are not used for oil.

Mr. MENKEN. I ask your honor just to make one charge. Perhaps you have already charged it; and that is, that if the jury finds, as a common-sense proposition, that these peanuts are not filthy, decomposed, or putrid, they must find for the claimant.

The COURT. I so charge.

Mr. BARNES. I except to that.

The COURT. When you say "common sense," you mean by construing the words as in their ordinary significance?

Mr. MENKEN. Yes; as we understand them normally in everyday life.

Mr. BARNES. I also except to that portion of your honor's charge where you stated that the testimony is that the peanuts are roasted. My recollection is that the bags seem to contain all unroasted peanuts.

The COURT. The testimony is that in the trade this particular brand of peanuts is used for roasting. If I am in error, the jury can take their own recollection.

LIBELANT'S REQUEST TO CHARGE.

1. If the jury find as a fact in this case that the 250 bags of peanuts that are the subject of this proceeding, consisted in part, of peanuts that were filthy, decomposed, or putrid, they shall find a verdict in favor of the Government.
2. If the jury find as a fact in this case that the 250 bags of peanuts that are the subject of this proceeding consisted of peanuts, 10 per cent of which were filthy, decomposed, or putrid, they shall find a verdict in favor of the Government.
3. The fact that a percentage of the peanut crop is ordinarily and necessarily moldy and wormy does not justify a shipment of moldy and wormy peanuts in interstate commerce and does not constitute a defense to a proceeding of this nature.
4. The fact that it is not possible to detect moldy and wormy peanuts without breaking open the shells does not constitute a defense to a proceeding of this nature, provided the jury find it a fact that peanuts of that character are a filthy, decomposed, or putrid vegetable product.
5. If the jury find as a fact that this shipment of 250 bags of peanuts consisted ,in part, of filthy, decomposed, or putrid peanuts, the Government is entitled to a verdict and to the condemnation and forfeiture of the entire shipment, and was not bound to separate the good peanuts from the bad, and to return or release the good peanuts to the claimant.

The jury retired at 4.35 p. m. and returned at 5.53 p. m. with a verdict for the libelant for 10 per cent of the goods seized.

Mr. MENKEN. I ask to have the jury polled.

The jury thereupon retired, and, after due deliberation, returned into court with a verdict in favor of the United States, and counsel for the claimant company filed a motion to set aside the verdict, and said motion was granted, and the case set for retrial. On March 30, 1916, the parties having consented thereto, an order of court was filed discontinuing the action without costs and releasing the merchandise under seizure to the claimant company without further costs.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4878. Adulteration of tomato pulp. U. S. * * * v. 62 Cases of Tomato Pulp. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 6752. I. S. No. 15478–k. S. No. C–277.)

On July 20, 1915, the United States attorney for the Eastern District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 62 cases, each containing 48 cans, of tomato pulp, remaining unsold in the original unbroken packages at New Orleans, La., alleging that the article had been shipped, on or about May 31, 1915, by the Scottsburg Canning Co., Scottsburg, Ind., and transported from the State of Indiana into the State of Louisiana, and charging adulteration in violation of the Food and Drugs Act. The cans were labeled in part: "Old Mammy's Brand Tomato Pulp."

Adulteration of the article was alleged in the libel for the reason that it consisted in part of a filthy, decomposed, and putrid vegetable substance.

On September 22, 1915, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4879. Adulteration and misbranding of tomato pulp. U. S. * * * v. 25 Cases of Canned Tomato Pulp. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 6781. I. S. No. 3686-k. S. No. E-375.)

On or about August 4, 1915, the United States attorney for the Eastern District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 25 cases, each containing 2 dozen cans, of tomato pulp, remaining unsold in the original unbroken packages at Alexandria, Va., alleging that the article had been shipped, on or about July 22, 1915, by W. P. Andrews, Crapo, Md., and transported from the State of Maryland into the State of Virginia, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled: "Asquith Brand Tomato Pulp, Made from Small Tomatoes and Fresh Tomato Trimmings, and Put Up under the Most Sanitary Conditions."

Adulteration of the article was alleged in the libel for the reason that it consisted, in whole and in part, of a filthy, decomposed, and putrid vegetable substance.

Misbranding was alleged for the reason that the article was in package form, and the quantity of the contents of each package was not plainly and conspicuously marked on the outside of each package in terms of weight, measure, or numerical count.

On January 5, 1916, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4880. Adulteration of tomato puree. U. S. * * * v. 570 Cases of Tomato Puree. Consent decree of condemnation, forfeiture, and destruction. (F. & D. Nos. 6785, 6786, 6789, 6790, 6791, 6792, 6793, 6794, 6795. I. S. No. 15869–k. S. No. C–284.)

On August 4, 1915, the United States attorney for the Northern District of Alabama, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 570 cases, each containing 48 cans, of tomato puree, remaining unsold in the original unbroken packages at Birmingham, Ala., alleging that the article had been shipped by the J. Weller Co., Oak Harbor, Ohio, May 29, 1915, and transported from the State of Ohio into the State of Alabama, and charging adulteration in violation of the Food and Drugs Act. The cans were labeled in part: "Hoffman House Brand 'Puree' Extra Quality and Flavor."

It was alleged in the libel that the article was adulterated within the meaning of section 7 of the Food and Drugs Act, paragraph 6.

On March 7, 1916, the said J. Weller Co., claimant, having interposed no objection, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4881. Adulteration and misbranding of aceto powder. U. S. * * * v. 25 Boxes of So-Called Aceto Powder. Default decree of condemnation and forfeiture. Product ordered sold. (F. & D. No. 6796. I. S. No. 15337-k. S. No. C-286.)

On August 3, 1915, the United States attorney for the Eastern District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 25 boxes of so-called V H Aceto Powder remaining unsold in the original unbroken packages at New Orleans, La., alleging that the article had been shipped, on or about July 19, 1915, by G. A. Earnhardt, Terre Haute, Ind., and transported from the State of Indiana into the State of Louisiana, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled, in part: "Trade Mark (Monogram F. G., in circle), 899150. Acid Acetylo-Salic. (Acetylsalicylsaure.)"

Adulteration of the article was alleged in the libel for the reason that it fell below the professed standard and quality under which it was sold in that it did not contain any acetyl salicylic acid.

Misbranding was alleged for the reason that the article was an imitation of, and was offered for sale and sold under the name of, another article, that is to say, under the name of acid acetylo-salic. Misbranding was alleged for the further reason that the article was contained in packages with labels thereon, which labels bore statements regarding the article and the ingredients and substances contained therein which were false and misleading, that is to say, the said labels bore the statement that the contents of the packages upon which they appeared were acetyl salicylic acid, whereas, in truth and in fact, the packages did not contain acetyl salicylic acid.

On September 22, 1915, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be sold by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4882. Adulteration of tomato pulp. U. S. * * * v. 54 Cases of Tomtao Pulp. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 6797. I. S. No. 15335–k. S. No. C–288.)

On August 3, 1915, the United States attorney for the Eastern District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 54 cases, each containing 48 cans, of tomato pulp, remaining unsold in the original unbroken packages at New Orleans, La., alleging that the article had been shipped, on or about July 1, 1915, by the Scottsburg Canning Co., Scottsburg, Ind., and transported from the State of Indiana into the State of Louisiana, and charging adulteration in violation of the Food and Drugs Act. The cans were labeled in part: "Old Mammy's Brand Tomato Pulp."

Adulteration of the article was alleged in the libel for the reason that it consisted in part of a filthy, decomposed, and putrid vegetable substance.

On September 22, 1915, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the property should be destroyed by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4883. Adulteration of tomato pulp. U. S. * * * v. 1,000 Five-gallon Cans of Tomato Pulp. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 6806. I. S. No. 14349-k. S. No. C-292.)

On August 11, 1915, the United States attorney for the Eastern District of Michigan, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 1,000 five-gallon cans of tomato pulp, remaining unsold in the original unbroken packages at Saginaw, Mich., alleging that the article had been shipped on June 28, 1915, by Houghland Brothers Canning Co., Underwood, Ind., and transported from the State of Indiana into the State of Michigan, and charging adulteration, in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that it was a partly decomposed vegetable product, although giving no visible evidence of active spoilage when opened.

On November 19, 1915, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4884. Misbranding of "Druna Queensroot Blood Compound." U. S. * * * v. National Union Drug Association, a corporation. Plea of guilty. Fine, $75. (F. & D. No. 6812. I. S. No. 6262–e.)

On December 11, 1915, the United States attorney for the Western District of Michigan, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the National Union Drug Assoc., a corporation, Grand Rapids, Mich., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about April 19, 1913, from the State of Michigan into the State of Nebraska, of a quantity of "Druna Queensroot Blood Compound," which was misbranded. The article was labeled in part: (On bottle) "Druna Queensroot Blood Compound."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the product to be a sirup containing 3.1 per cent of alcohol by volume, 84.7 grams per 100 cc of solids, including glycerin, 67.1 grams per 100 cc of sugars, 16.9 grams per 100 cc of glycerin, and a trace of arsenic; no potassium iodid present; odor and taste indicate sarsaparilla compound.

Misbranding of the article was alleged in the information for the reason that the following statement, appearing on the label aforesaid, to wit, "This remedy represents the following extracts in combination with iodide of potassium," was false and misleading, in that it indicated to purchasers thereof that the article was a compound of potassium iodid and other ingredients, when, in truth and in fact, it did not contain any potassium iodid whatever. Misbranding was alleged for the further reason that the following statements, regarding the therapeutic or curative effects of the article, appearing on the label of the bottles aforesaid, to wit, "Druna Queensroot Blood Compound * * * This remedy represents the following Extracts * * * Recommended for the purifying of the blood * * * for the removal of * * * all diseases having their origin in an impure state of the blood. * * * all those that are troubled with * * * diseases of the Kidneys this compound will prove an excellent remedy * * *," were false and fraudulent in that the same were applied to the article knowingly and in reckless and wanton disregard of their truth or falsity so as to represent falsely and fraudulently to the purchasers thereof, and create in the minds of purchasers thereof the impression and belief, that it was, in whole or in part, composed of or contained ingredients or medicinal agents effective, among other things, as a blood purifier and as a remedy for all diseases having their origin in an impure state of the blood, and diseases of the kidneys, when, in truth and in fact, it was not, in whole or in part, composed of and did not contain such ingredients or medicinal agents.

On June 14, 1916, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $75.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4885. Adulteration of horse beans. U. S. v. 430 Bags of Horse Beans. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. No. 6824. I. S. Nos. 12859-k, 12860-k, 12861-k, 12862-k, 12863-k, 12864-k. S. No. C-298.)

On August 19, 1915, the United States attorney for the Eastern District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 430 bags of horse beans, remaining unsold in the original unbroken packages at New Orleans, La., alleging that the article had been shipped on August 10, 1915, by Bernard & Bunker, Gilroy, Cal., and transported from the State of California into the State of Louisiana, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that it consisted in part of a filthy, decomposed, and putrid vegetable substance.

On September 17, 1915, Nevins Kirkpatrick, claimant, having consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be delivered to said claimant upon payment of the costs of the proceedings and the execution of bond in the sum of $1,000, in conformity with section 10 of the act.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4886. Adulteration and misbranding of pepper. U. S. * * * v. The Great Eastern Coffee & Tea Co., a corporation. Plea of guilty. Fine, $20 and costs. (F. & D. No. 6827. I. S. No. 13884–k.)

On April 3, 1916, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Great Eastern Coffee & Tea Co., a corporation, St. Louis, Mo., alleging shipment by said company, in violation of the Food and Drugs Act, on or about January 26, 1915, from the State of Missouri into the State of Illinois, of a quantity of black pepper which was adulterated and misbranded. The article was labeled in part: (On can) "4 Oz. Net The Great Eastern The Leader Beats all Ground Spices Black Pepper."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Total ash (per cent)	5.07
Acid-insoluble ash (per cent)	0.28
Nonvolatile ether extract (per cent)	7.64
Crude fiber (per cent)	14.28

Color and appearance show added pepper shells present.

Adulteration of the article was alleged in the information for the reason that a substance, to wit, pepper shells, had been mixed and packed therewith so as to lower or reduce and injuriously affect its quality and strength and had been substituted in part for black pepper, which the article purported to be.

Misbranding was alleged for the reason that the statement, to wit, "black pepper," borne on the label of the article, regarding it and the ingredients and substances contained therein, was false and misleading, in that it represented that the article consisted exclusively of black pepper, and further in that it was labeled "black pepper" so as to deceive and mislead the purchaser into the belief that it was pure black pepper containing no more shells than are normally present in pepper, whereas, in truth and in fact, it did not so consist [of] and was not pure black pepper as aforesaid, but did consist of a mixture of black pepper and added pepper shells.

On May 8, 1916, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $20 and costs.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4887. Adulteration and misbranding of vinegar. U. S. * * * v. 10 Barrels of So-Called Pure Apple Cider Vinegar. Default decree of condemnation and forfeiture. Product ordered sold. (F. & D. No. 6832. I. S. No. 12858-k. S. No. C-304.)

On August 25, 1915, the United States attorney for the Eastern District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 10 barrels of so-called pure apple cider vinegar, remaining unsold in the original unbroken packages at New Orleans, La., alleging that the article had been shipped, on or about August 13, 1915, by Dawson Brothers Manufacturing Co., Memphis, Tenn., and transported from the State of Tennessee into the State of Louisiana, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled: "Dawson Bros. Mfg. Co., Inc., Memphis Tenn. Southern Beauty Brand Pure Apple Cider Vinegar. Dilute to not less than four per cent acid strength."

Adulteration of the article was alleged in the libel for the reason that it was not pure apple cider vinegar, but distilled vinegar or a dilute solution of acetic acid had been mixed and packed with said article so as to reduce and lower and injuriously affect its quality and strength, and had been substituted, wholly or in part, for said article. Adulteration was alleged for the further reason that the article had been colored in a manner whereby inferiority was concealed.

Misbranding was alleged for the reason that the labels upon the barrels containing the article bore statements regarding the article which were false and misleading, that is to say, said labels bore the words, "Southern Beauty Brand Pure Apple Cider Vinegar," meaning that the article was pure apple cider vinegar, whereas, it was not, but contained distilled vinegar or a dilute solution or acetic acid. Misbranding was alleged for the further reason that the article was labeled and branded so as to deceive and mislead the purchaser, that is to say, it was labeled and branded as pure apple cider vinegar, whereas, it was not, but contained distilled vinegar or a dilute solution of acetic acid.

On September 24, 1915, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be sold by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4888. Adulteration and misbranding of mineral water. U. S. v. 50 Cases * * * of Mineral Water. Consent decree of condemnation, forfeiture, and destruction. (F. & D. No. 6849. I. S. No. 14179-k, 10450-l. S. No. C-317.)

On September 4, 1915, the United States attorney for the Southern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 50 cases, each containing 2 dozen bottles of mineral water consigned by D. C. Fry & Co., Inc., Colfax, Iowa, and remaining unsold in the original unbroken packages at Moline, Ill., alleging that the article had been shipped on or about August 13, 1915, and transported from the State of Iowa into the State of Illinois, and charging adulteration and misbranding in violation of the Food and Drugs Act. The bottles were labeled in part: "Carbonated Colfax Mineral Water."

It was alleged in substance in the libel that the article was adulterated, for the reason that a chemical and bacteriological examination of a sample of the article showed it to be polluted, and that it contained excessive numbers of bacteria, including gas-producing organisms.

Misbranding was alleged for the reason that the labels or brands appearing on the outside of the bottles failed to bear a statement of the quantity of the contents, and for the further reason that said labels or brands bore the word, "carbonated," when, in fact, examination showed the product to be artificially carbonated. Misbranding was alleged for the further reason that an examination of the article showed that it contained no ingredients or combination of ingredients capable of producing the following therapeutic effects claimed in the label, "This water is an infallible remedy for all diseases of the liver, kidneys, and blood. It cures constipation and is the most pleasant and certain promoter of digestion known. Nature's remedy for the cure of every form of indigestion or dyspepsia and acute and chronic rheumatism and now acknowledged to be the most wonderful specific for kidney affections yet discovered," and the product was further misbranded in that the above quotation statements were false and fraudulent.

On October 5, 1915, the said D. C. Fry & Co., Inc., having appeared as claimant and having interposed no objection to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal, that the cases and bottles should be returned to said claimant, and that the claimant should pay the costs of the proceedings.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4889. Adulteration of tomato pulp. U. S. * * * v. 150 Cases of Tomato Pulp. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 6854. I. S. No. 11112–l. S. No. C–320.)

On September 11, 1915, the United States attorney for the Western District of Texas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 150 cases, each containing 4 dozen No. 1 cans, of tomato pulp, consigned by the Mantik Packing Co., Highlandtown, Md., and remaining unsold in the original unbroken packages at Austin, Tex., alleging that the article had been shipped on or about February 20, 1915, and transported from the State of Maryland into the State of Texas, and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: (On can) "Ruxton Brand Packed by Mantik Packing Co., Highlandtown, Md. Ruxton Brand Tomato Pulp, Made from Tomatoes and Tomato Trimmings."

Adulteration of the article was alleged in the libel for the reason that it was composed of a partially decomposed vegetable substance.

On January 28, 1916, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4890. Adulteration of strained tomatoes. U. S. * * * v. 125 Cases of Strained Tomatoes. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 6857. I. S. No. 11114–l. S. No. C–323.)

On September 17, 1915, the United States attorney for the Western District of Texas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 125 cases, each containing 2 dozen No. 1 cans, of strained tomatoes, consigned by the Scottsburg Canning Co., Scottsburg, Ind., and remaining unsold in the original unbroken packages at San Antonio, Tex., alleging that the article had been shipped on or about July 5, 1915, and transported from the State of Indiana into the State of Texas, and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: (On can) "Blue Jay Brand strained tomatoes."

Adulteration of the article was alleged in the libel for the reason that it was composed of a partially decomposed vegetable substance.

On May 26, 1916, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4891. Misbranding of "Dr. Bell's Pine Tar Honey." U. S. * * * v. 96 dozen Bottles of "Dr. Bell's Pine Tar Honey." Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 6858, 6880. I. S. Nos. 3305-l, 3322-l. S. Nos. E-387, E-398.

On September 15, 1915, the United States attorney for the district of Porto Rico, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 36 dozen packages, and, on October 5, 1915, an amended libel, for the seizure and condemnation of 96 dozen packages of "Dr. Bell's Pine Tar Honey," each package containing 1 bottle, remaining unsold in the original unbroken packages at Ponce, P. R., alleging that 36 dozen packages of the article had been shipped on or about May 12, 1915, and 60 dozen packages of the article had been shipped on or about July 22, 1915, by R. W. Warner & Co., Philadelphia, Pa., through Gabriel J. Fajardo, acting as forwarding agent, and transported from the State of New York into the Island of Porto Rico, and charging misbranding in violation of the Food and Drugs Act, as amended. The article was labeled: (On carton) "Dr. Bell's Pine Tar Honey," following which and in the center was a bell surrounded by a ring and on the bell were the following words, "Dr. Bell's Pine Tar Honey," and in the ring the following words, "E. E. Southern Medicine Co., Paducah, Ky. Cures Coughs"; beneath said ring were the words "Registered. Cures coughs, colds, croup, whooping cough, and all soreness of the throat, chest and lungs, grip, bronchitis, asthma and incipient consumption, Laboratories, Paducah, Ky., and Mexico," and upon the side were the words "Dr. Bell's Pine Tar Honey is guaranteed to relieve quickly any and all coughs, allay inflammation of the throat, chest, lungs and bronchial tubes. Perfectly harmless. Good for children. Pleasant to the taste." The circular accompanying the article and inside the carton contained the following testimonials and directions, to wit: "I am 89 years old and never used any remedy equal to Dr. Bell's Pine-Tar Honey. It gives quick relief and permanent relief in grippe as well as coughs and colds." "A pleasant and scientific treatment for coughs and colds." "Do not stop the treatment the minute you obtain relief, but continue until all symptoms disappear." "We have two children who have whooping cough; we used Dr. Bell's Pine-Tar Honey and broke it up entirely. * * * Thanking you for your valuable remedy, I beg to remain." "My mother had a cough for five years and some nights she would have to sit up all night. She has taken six 25¢ bottles of Dr. Bell's Pine-Tar Honey and it has cured her." "Hopeless Lung Trouble. I have used Dr. Bell's Pine Tar Honey in a case that had been given up as a hopeless lung trouble, and it affected a complete cure." "Since beginning the use of this remedy I feel better than I have for years and would not be without it." "This remedy is not a narcotic, but takes affect at the seat of disease." "For ordinary coughs and soreness of chest. Adults, take 2 teaspoonfuls four times a day." "For dry, hacking and troublesome coughs, take half teaspoonful every hour until relieved." "For asthma, take 1 teaspoonful every hour until relieved or until four doses have been taken—two to three doses generally relieve the most obstinate case." "For bad colds, adults, take a double dose (or 4 teaspoonfuls) before retiring and two or three doses during the day." "For bronchitis and sore throat, take 1 teaspoonful every two hours during the day and a dose on retiring at night." "For tonsilitis, take 1 teaspoonful every hour." "For La Grippe, take a full dose every four hours during the day and on retiring at night." "For croup and whooping cough, children 6 years old, 1 teaspoonful; 1 to 6 years old, half teaspoonful in a little syrup or molasses every two hours until relieved." "Convalescents from measles and pneumonia should use Dr. Bell's Pine Tar

Honey for the cough that nearly always follows these diseases." Another circular accompanied the article, printed in Spanish, a translation of which, in part, is as follows: "* * * cure coughs, cold and inflammation of the walls of the lungs and bronchial tubes. Reanimates the diseased lung spent and wounded by the cough; cuts off the mucous which the microbes give off; removes the cause of that tickling, and heals the inflamed membranes, softening them so that there is no inclination to cough. * * * a remedy. * * * It relieves promptly and permanently the cough as well as grip and colds and fortifies weak lungs." "* * * At the beginning of his experiments, the theory of Dr. Bell was that if he managed to discover such a remedy it must be composed of substances absolutely harmless, possessing properties antiseptic for the positive destruction of the microbes, and moreover must contain other medicines necessary to prevent inflammations; which would restore the normal activity in the interior lining of the stomach and in the mucous membranes of the nose, throat, bronchial tubes and lungs. Basing on this theory, it was that Dr. Bell spent thousands of dollars and a long time, managing at length to obtain successfully a prize ten thousand times greater than he had hoped for by the discovery of a perfect pharmaceutical combination which he named Dr. Bell's Pine Tar Honey." "This famous medicine contains two ingredients which were formerly unknown as cough remedies, remedies for the lungs, whooping cough and bronchitis. * * * This great process is so original and scientific that besides keeping for each one of its agents its antiseptic and curative properties, the mixture of them makes them retain their virtues, multiplying their strength * * * there is obtained the only antiseptic for internal use, destroyer of microbes and contagious diseases, the accredited Dr. Bell's Pine Tar Honey." "Dr. Bell's Pine Tar Honey cures cough by attacking that which has caused them. This remedy cuts off the mucous and destroys the microbes of contagious diseases * * * it prevents the inclination to cough." "It acts almost instantly upon cough." "We guarantee that it is better than any other medicine to cure cough, diseases of the throat, chest and lungs." "It relieves inflammation, restores the lungs and strengthens the respiratory organs, giving vigor and vitality to the whole system. It makes the blood duly receive a sufficient amount of oxygen, strengthening it (the blood) at the same time, and protecting the lungs against contagious diseases." "When microbes of consumption arrive * * * if Dr. Bell's Pine Tar Honey is not immediately recurred to, the microbes will slowly but surely infect with their poison all of the parts of the mucous membranes, thus covering the lungs, and making the wound more intense, the inflammation more and more extended and the cough heavier and more painful. The only remedy which should be used in such cases is the great medicine which will kill the microbes and do away with the least molecule of putrid matter. * * * Dr. Bell's Pine Tar Honey is the only composition which truly finishes with the microbes and gives permanent health to all of the mucous membranes of the human body." "A single dose of this accredited remedy * * * will give immediate relief. * * * It cleans and purifies the diseased parts of the human body, the same as soap and water cleans the hands when they are dirty. It cicatrizes and cuts off the flow of pus and mucous; cures the putrefaction and the very bad poison of the microbe, killing and destroying all of the infectious germs. This famous medicine relieves the pains, relieves the irritation and cures all inflammation. It reestablishes all the lost mucous membranes, and cicatrizes all infectious wounds." "Dr. Bell's Pine Tar Honey is the best remedy for cold, cough, grippe and incipient consumption." "Dr. Bell's Pine Tar Honey will not only cure and prevent coughs, catarrh, bronchitis, whooping cough and grippe, but it also gives good color to pale cheeks, nourishing

and restoring the inactive functions. It removes congestion, enriches the blood and creates good flesh. It is health itself * * * its principal work consists in killing the microbes and germs of contagious diseases and in giving the blood its natural supply of oxygen. Both in insignificant coughs and grave diseases of the lungs, the beneficial results of Dr. Bell's Pine Tar Honey are felt from the time that it is first taken." "Dr. Bell's Pine Tar Honey not only kills the microbes of whooping cough, but it also forcibly returns the lost health and strength to the patient." "The inflammation of the sore throat, whooping cough and diseases of this kind disappear. When Dr. Bell's Pine Tar Honey is administered to children for sore throat and whooping cough, these disappear as by enchantment. It makes the accesses and the desperation caused by the sore throat breathing disappear almost instantly. * * * It relieves the weakness in the throat, chest and lungs which is the natural consequences of neglected colds, coughs, inflammation of the throat, whooping cough and grippe." "Microbes of pneumonia. * * * If the microbe of pneumonia is introduced into the mouth and you breathe it into the lungs, and contract a cold, it is almost sure that you will become ill if you do not recur immediately to the use of a medicine which cures not only the cold, but also kills the microbe. Dr. Bell's Pine Tar Honey is the only remedy which would be able to aid you in such cases. It prevents colds and kills the microbes of pneumonia." "Thousands of the doctors of medicine who assure that by using this great remedy, the courses of grave diseases can be turned aside. A dose after supper and another at retiring will almost always cure colds and prevent danger." "Microbes of grip or influenza * * * Dr. Bell's Pine Tar Honey has never been known to fail in curing rapidly, with certainty and permanently grip, influenza, cold and catarrh and is a magnificent specific for asthma and bronchitis." "This remedy is a balsamic cicatrizant and a strong invigorator of the throat, chest and lungs. It will always alleviate that incessant pain and will stop the heavy, noisy asthmatic breathing which precedes. If you have the grip, there is no other remedy on earth which can cure you sooner or better than Dr. Bell's Pine Tar Honey. It will cure you permanently, and the use of it will give strength to your lungs and in general better health than you have enjoyed in your life." "Dr. Bell's Pine Tar Honey is the best remedy for diphtheria. It destroys the microbes antiseptically, and stops the mortal exertion or poisonous mucous; it immediately relieves the inflammation, opens the obstructed parts of the respiratory tracts and revives the patient." "There is nothing better than this remedy for the diseases of the throat, chest and lungs, both for adults and children." "This remedy is most excellent for the cough. It has a curative effect, definite and decided on the center of the centers of the cough whatever may be the case. Dr. Bell's Pine Tar Honey is in the first place the true remedy of nature; a natural remedy. * * * The time is short, from 5 to 30 minutes in all, when its curative effects begin to be noted by the patient. * * * The cough is then much less intense and more satisfactory, since the small bronchial tubes and the cells of the lungs open more rapidly and freely." "It reduces the number of respirations per minute, increasing principally both the force and the time of each inspiration." "It is equally serviceable in acute and chronic bronchitis, asthma, pneumonia, grippe, nervous coughs and pulmonary consumption. 'Pulmonary consumption?' Very certainly. In this disease there is experienced a great relief, and the cough, molestation and irritation are calmed greatly."

Misbranding of the article was alleged in the amended libel for the reason that the statements on the cartons inclosing and circulars accompanying the

articles were false, fraudulent, and misleading, and it was therefore misbranded, a chemical analysis of said article showing that it contained no ingredient that would produce the effect claimed for it in said label or circular, and said article was mislabeled and misbranded so as to deceive and mislead the purchasers thereof, in that the packages and labels thereof bore a statement regarding it and the ingredients and substances contained therein which was false, misleading, and fraudulent, that is to say, the label and circulars were so worded as to lead the public to believe that said article was a useful and good medicine and would cure the various ills, diseases, and complaints as set out in said label and circulars, whereas in fact it was not of a medicinal nature which would produce any such result and was utterly worthless for that purpose.

On December 6, 1915, no claimant having appeared for the product, judgment of condemnation and confiscation was entered, and it was ordered by the court that the article should be destroyed by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4892. Adulteration of tomato pulp. U. S. * * * v. 500 Cases of Tomato Pulp. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 6865. I. S. No. 11116-l. S. No. C-324.)

On September 21, 1915, the United States attorney for the Western District of Texas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 500 cases, each containing 4 dozen cans, of tomato pulp, consigned by the Scottsburg Canning Co., Scottsburg, Ind., and remaining unsold in the original unbroken packages at San Antonio, Tex., alleging that the article had been shipped on or about July 5, 1915, and transported from the State of Indiana into the State of Texas, and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: (On can) "Scott Co. Brand Whole Tomato Pulp packed by Austin Canning Co., Austin, Ind."

Adulteration of the article was alleged in the libel for the reason that it was composed of a partially decomposed vegetable substance.

On May 26, 1916, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4893. Misbranding of "Pabst Okay Specific." U. S. * * * v. 12 Dozen Bottles of "Pabst Okay Specific." Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 6866. I. S. No. 3304–l. S. No. E–390.)

On September 23, 1915, the United States attorney for the District of Porto Rico, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 12 dozen bottles of "Pabst Okay Specific," remaining unsold in the original unbroken packages at Ponce, P. R., alleging that the article had been shipped, on or about April 25 1915, for the Pabst Chemical Co., Chicago, Ill., and transported from the State of New York into the island of Porto Rico, and charging misbranding in violation of the Food and Drugs Act, as amended. The article was labeled in part: "Pabst O. K. Okay Specific."

Misbranding of the article was alleged in the libel for the reason that the bottles, wrappers, and circulars were labeled in common type: "Pabst O. K. Okay Specific for gonorrhea, blenorrhea, leucorrhea, kidney and bladder trouble, for chronic seminal and mucous emissions" "Absolutely safe, never fails" and further the Spanish circulars which accompany the bottles read in part as follows: "of the 25 or 30 bottles which he had sold not one had not effected a cure" "obtained the most marvellous cures" "then if 132 were so confident and each one was cured, it appears to us reasonable to suppose that the remedy will do the same to you." In the English label the following statements are included: "Okay Specific is an infallible remedy for all cases of gonorrhea, gleet (no matter of how long standing), leucorrhea of women (commonly called whites), bladder and kidney affections, chronic seminal and mucous discharges" "This medicine is absolutely safe" "If the Okay Specific is properly and persistently taken it will cure without fail no matter how old or how serious the case may be" "It is infallible" "No case is known where a complete cure has not been accomplished" "Take the remedy regularly in full doses without ever interrupting the treatment until you are completely cured" "In order to accomplish a complete and permanent cure it is necessary to continue taking the remedy" "The time which is required to accomplish a complete cure depends on the seriousness of the case" "most cases will be cured with one or two bottles" "Gleet—Pabst O-Kay Specific is especially effective in cases of gleet or chronic gonorrhea" "Invariably cured by the Okay specific" "No matter how old the case, the Okay Specific will positively cure" "Seminal and mucous discharges, kidney and bladder troubles and leucorrhea," which said label, indorsement, and recital on the bottles, packages, and circulars were false and fraudulent, and the product was therefore misbranded, a chemical analysis of the same showing that it contained no ingredient or ingredients that would produce the effect claimed for it in said label, indorsement, and circular. It was further alleged that the article was mislabeled and misbranded as aforesaid so as to deceive and mislead the purchaser or purchasers thereof in that the label, circular, and container bore a statement regarding the article and the ingredients and substances contained therein which was false, misleading, and fraudulent, that is to say, said label, indorsement, and statement on the bottle, wrapper, and circular was so worded as to lead the public to believe that the article was a useful and good medicine and would cure the various ills, diseases, and complaints as set out in said label, whereas it was not of a medicinal nature to produce any such results, and was utterly

worthless for that purpose. Misbranding was alleged for the further reason that the article failed to bear a statement on the label of the quantity or proportion or alcohol contained therein, whereas a large proportion of the article was composed of alcohol.

On December 6, 1915, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4894. Adulteration and misbranding of water. U. S. * * * v. 6 Cases * * * of "Baldwin Cayuga Mineral Water." Consent decree of condemnation, forfeiture, and destruction. (F. & D. No. 6890. I. S. No. 1917–l. S. No. E–402.)

On October 4, 1915, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel, and, on March 29, 1916, an amended libel, for the seizure and condemnation of 6 cases, each containing 10 half-gallon bottles, of Baldwin Cayuga mineral water, remaining unsold in the original unbroken packages at East Orange, N. J., alleging that the article had been shipped, on or about September 14, 1913, by Lucius Baldwin & Son, Cayuga, N. Y., and transported from the State of New York into the State of New Jersey, and charging adulteration in violation of the Food and Drugs Act. The article was labeled: "Baldwin Cayuga Natural Medicated Spring Water sells on its merits. Baldwins Cayuga Natural medicated Spring Water Cures: Brights Disease, Diabetes and all Kidney afflictions, Liver complaints, Dyspepsia and other disorders of the Stomach. All affections of the Bladder and Urinary organs, Rheumatism in all forms, Jaundice, Constipation, Salt-Rheum. All Skin Diseases and a Wonderful Tonic for General Debility. Bottled at the Springs."

Adulteration of the article was alleged in the libel for the reason that it consisted, in whole or in part, of a filthy, putrid, or decomposed substance.

Misbranding was alleged in substance for the reason that the following statements regarding the therapeutic or curative effects thereof, appearing on the labels aforesaid, to wit, "Cures: Bright's Disease, Diabetes and all Kidney Afflictions, Liver Complaints, Dyspepsia and other disorders of the Stomach. All affections of the Bladder and Urinary Organs, Rheumatism in all forms, Jaundice, Constipation, Salt-Rheum. All Skin Diseases and a Wonderful Tonic for General Debility," falsely and fraudulently represented it as a remedy for Bright's disease, diabetes, all kidney afflictions, liver complaints, dyspepsia, and other disorders of the stomach, all affections of the bladder and urinary organs, rheumatism in all forms, jaundice, constipation, salt-rheum, all skin diseases, and general debility, when, in truth and in fact, it was not.

On August 25, 1916, the said Lucius Baldwin & Son, claimants, having filed their answer consenting to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the article should be destroyed by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4895. Adulteration of condensed milk. U. S. * * * v. 5 Cases of Condensed Milk. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 6881. S. No. C-330.)

On September 27, 1915, the United States attorney for the Eastern District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 5 cases, containing 272 cans, of condensed milk, consigned by the Iberville Wholesale Grocery Co., Plaquemine, La., remaining unsold in the original unbroken packages at New Orleans, La., alleging that the article had been delivered for shipment on or about July 27, 1915, and was in course of transportation from the State of Louisiana into the State of Illinois, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that it consisted, in whole or in part, of a filthy and decomposed animal substance.

On May 4, 1916, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be disposed of [destroyed] by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4886. Adulteration of tomatoes. U. S. * * * v. 107 Cases of Tomatoes, so-called. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 6893. I. S. Nos. 1515–l, 1516–l. S. No. E–397.)

On October 4, 1915, the United States attorney for the Northern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 107 cases, each containing 2 dozen cans, of tomatoes, so-called, remaining unsold in the original unbroken packages at Syracuse, N. Y., alleging that the article had been shipped by C. L. Seward, Cambridge, Md., 87 of the cases on or about February 18, 1915, and 22 of the cases on or about May 28, 1915, and transported from the State of Maryland into the State of New York, and charging adulteration in violation of the Food and Drugs Act. The cans were labeled: "Carroll Brand (Design of Tomato) Tomatoes contents 2 lbs. Carroll Brand (Design of Landscape). Packed by C. L. Seward, Cambridge, Md. C. L. S."

The allegations in the libel were to the effect that the article was adulterated in that it was decomposed and contained 10 per cent of water, and also contained other unwholesome and unfit substances, and that 10 per cent of the cans were swells.

On December 7, 1915, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4897. Adulteration and misbranding of lemon peel flavor. U. S. * * * v. Sally Gumpert et al. (S. Gumpert & Co.). Plea of guilty. Fine, $25. (F. & D. No. 6911. I. S. No. 8663–h.)

On March 3, 1916, the United States attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Sally Gumpert and Jacob Gumpert, trading as S. Gumpert & Co., Brooklyn, N. Y., alleging shipment by said defendants, in violation of the Food and Drugs Act, on or about May 18, 1914, from the State of New York into the State of Georgia, of a quantity of lemon peel flavor which was adulterated and misbranded. The article was labeled: (On bottle) "Gumpert's Emulsion Lemon Peel Flavor Made from Selected Lemon Peels by a Process which Retains all the Delicious Aroma and Flavor of the Fresh Fruit. Adaptable to any Food Product Where Lemon Flavor is Desired, Ready for Immediate Use. Can be Diluted to any Extent Perfectly Soluble in Water or any Other Fluid. Will not Bake Out Will Not Freeze Out Will Not Boil Out Manufactured by S. Gumpert & Co. Bush Terminal Brooklyn, New York. U. S. A."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Oil (per cent by weight)	20.0
Citral (per cent by weight)	3.5
Total solids (per cent)	52.0
Sugar (per cent)	25.0

Gum Arabic: Present.

The substance is not "soluble in water or any other fluid" as claimed.

Adulteration of the article was alleged in the information for the reason that commercial citral had been mixed and packed therewith so as to reduce, lower, and injuriously affect its quality and strength and had been substituted for lemon peel flavor made from selected lemon peels, which the article purported to be.

Misbranding was alleged for the reason that the following statements regarding the article and the ingredients and substances contained therein, appearing on the label aforesaid, to wit, "Lemon Peel Flavor Made from Selected Lemon Peels by a Process which Retains all the Delicious Aroma and Flavor of the Fresh Fruit," were false and misleading in that they indicated to purchasers thereof that the article consisted wholly of lemon peel flavor made from selected lemon peels, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchasers into the belief that it consisted wholly of lemon peel flavor made from selected lemon peels, when, in truth and in fact, it did not, but did consist of, to wit, a mixture of commercial citral and lemon peel flavor. Misbranding was alleged for the further reason that the following statement regarding the article and the ingredients and substances contained therein appearing on the label aforesaid, to wit, "Perfectly soluble in water or any other fluid," was false and misleading in that it indicated to purchasers thereof that the article was perfectly soluble in water or any other fluid, and for the further reason that it was labeled as aforesaid so as to

deceive and mislead purchasers into the belief that it was perfectly soluble in water or any other fluid, when, in truth and in fact, it was not. Misbranding was alleged for the further reason that the article was a mixture of commercial citral and lemon peel flavor, and was an imitation of, and was offered for sale under the distinctive name of, another article, to wit, lemon peel flavor.

On June 2, 1916, a plea of guilty was entered on behalf of the defendants, and the court imposed a fine of $25.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4898. Adulteration of tomato pulp. U. S. v. 100 Cases of Tomato Pulp. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 6913. I. S. No. 11120–l. S. No. C–349.)

On October 16, 1915, the United States attorney for the Western District of Texas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 100 cases, each containing 4 dozen No. 1 cans, of tomato pulp consigned by Mantik Packing Co., Highlandtown, Md., and remaining unsold in the original unbroken packages at El Paso, Tex., alleging that the article had been shipped on or about February 15, 1915, and transported from the State of Maryland into the State of Texas, and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: (On can) "Ruxton Brand, Packed by Mantik Packing Co., Highlandtown, Md. Ruxton Brand Tomato Pulp, Made from Tomatoes and Tomato Trimmings."

Adulteration of the article was alleged in the libel for the reason that it was composed of a partially decomposed vegetable substance.

On April 14, 1916, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4899. Misbranding of fernet branca. U. S. * * * v. 11 Cases of Fernet Branca. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. No. 6915. I. S. No. 11229–l. S. No. C–347.)

On October 13, 1915, the United States attorney for the Eastern District of Michigan, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 11 cases, each containing 12 bottles, of fernet branca, remaining unsold in the original unbroken packages at Detroit, Mich., alleging that the article had been shipped on July 28, 1915, by Charles F. Mezzardi, New York, N. Y., and transported from the State of New York into the State of Michigan, and charging misbranding in violation of the Food and Drugs Act. The bottles were labeled in part: "Italy" "Feruet-Branca. dei Fratelli Branca E. Comp. * * * Fernet-Branca Fili Branca-Milan (Italy)."

It was alleged in the libel that the article was misbranded in violation of section 8 of the Food and Drugs Act, first general paragraph under the classification of food in said act, that said food product was not fernet branca, but an imitation of that product, and the labeling thereof, as aforesaid, constituted a violation of said Food and Drugs Act.

On June 30, 1916, the said Charles F. Mezzardi having filed his claim for the property, it was ordered by the court that the product should be released to said claimant upon payment of the costs of the proceedings and the execution of bond in the sum of $500, conditioned in part that the goods should be emptied from the original packages into bulk form, and that the bottles and cases containing the same should be confiscated and destroyed.

CARL VROOMAN, *Acting Secretary of Agriculture.*

4900. Misbranding of fernet branca. U. S. * * * v. 23 Cases of Fernet Branca. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. No. 6916. I. S. No. 11224–l. S. No. C–336.)

On October 13, 1915, the United States attorney for the Eastern District of Michigan, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 23 cases, each containing 12 bottles of fernet branca, remaining unsold in the original unbroken packages at Detroit, Mich., alleging that the article had been shipped, on September 13, 1915, by Charles F. Mezzardi, New York, N. Y., and transported from the State of New York into the State of Michigan, and charging misbranding, in violation of the Food and Drugs Act. The bottles were labeled, in part: "Italy" "Fernet-Branca. dei Fratelli Branca E. Comp. * * * Fernet-Branca Fili Branca-Milan (Italy)."

It was alleged in the libel that the article was misbranded, in violation of section 8 of the Food and Drugs Act, first general paragraph under the classification of food, in said act; that said food product was not fernet branca, but an imitation of that product, and the labeling thereof, as aforesaid, constituted a violation of said Food and Drugs Act.

On June 30, 1916, the said Charles F. Mezzardi having filed his claim for the property, it was ordered by the court that the product should be released to said claimant upon payment of the costs of the proceedings and the execution of bond in the sum of $500, conditioned in part that the goods should be emptied from the original packages into bulk form, and that the bottles and cases containing the same should be confiscated and destroyed.

CARL VROOMAN, *Acting Secretary of Agriculture.*

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